



# **VEHICLE LESSOR-RETAILER PROGRAM HANDBOOK**

# APPLICATION REQUIREMENTS FOR VEHICLE LESSOR-RETAILER LICENSE

## PURPOSE

The purpose of this pamphlet is to assist the prospective vehicle lessor-retailer by describing the requirements to obtain a vehicle lessor-retailer license from the Department of Motor Vehicles (DMV).

## WHAT IS A VEHICLE LESSOR-RETAILER?

A “**vehicle lessor-retailer**” is any lessor or renter who sells previously leased or rented vehicles “to the public other than (1) a person who has leased the vehicle for at least one year, or (2) a buyer for agricultural, business or commercial purpose, or (3) a government agency.” A lessor-retailer must secure either a vehicle dealer or lessor-retailer license to conduct this activity. *CVC Sections 286, 373, and 11600 et seq.*

## BACKGROUND INVESTIGATION

A background investigation is conducted on all applicants. Failure to disclose convictions or providing incorrect information on the application may result in the refusal or denial of your license. The department may refuse to issue a license to any applicant who has been convicted of a crime or committed any act or engaged in any conduct involving moral turpitude which is substantially related to the qualifications or duties of the licensed activity. A conviction based on plea of nolo contendere is a conviction within the meaning of this section. CVC Section 11604. Persons previously working under a license issued by DMV, which was revoked or suspended for cause may also be denied a license. In addition, the California Code of Regulations (CCR) and additional sections of the California Vehicle Code provides guidelines used by the department in determining whether a license should be issued. *CCR, Title 13, Chapter 1.*

## REQUIREMENTS FOR A VEHICLE LESSOR-RETAILER’S LICENSE

*CVC Sections 9262 and 11600 et seq.*

Every applicant for a vehicle lessor-retailer’s license **must**:

- File an application with the department.
- Pay the required fees.

## VEHICLE LESSOR-RETAILER’S LICENSING FEES

The fees to become a licensed vehicle lessor-retailer are:

- \$151 Non-refundable application fee
- \$ 1 For Family Support Program
- \$ 70 For each branch location (if applicable)

The Family Support Program fee is paid on original, renewal, and reinstatement applications.

## VEHICLE LESSOR-RETAILER’S LICENSE FORMS

An application for a vehicle lessor-retailer license consists of the following forms:

- **OL 21A**, Application for Occupational License, Part A
- **OL 29**, Personal History Questionnaire, Part B
- **OL 12**, Applicant for Occupational License, Part C
- **OL 25**, Surety Bond Verification (\$10,000 bond executed) *CVC Section 11612*
- **OL 107**, Corporate Declaration/Limited Liability Company Declaration
- Live Scan Fingerprint Clearance

The following documents are also required as part of the application package:

- Board of Equalization Resale Permit
- Application for zoning

## **VEHICLE LESSOR-RETAILER RENEWAL FEES**

The fees to renew a vehicle lessor-retailer license are:

- \$ 1 For Family Support Program
- \$100 Renewal application fee
- \$ 70 Renewal of branch location (each location)

The Family Support Program fee is paid on original, renewal, and reinstatement applications.

## **FEES TO CHANGE A VEHICLE LESSOR-RETAILER'S LICENSE**

The fees to change a vehicle lessor-retailer license are:

- \$ 70 Name change
- \$ 70 Address change
- \$ 70 Add a branch
- \$ 70 Officer Change

## **FORMS TO CHANGE A VEHICLE LESSOR-RETAILER'S LICENSE**

Form(s) to change your existing vehicle lessor-retailer license:

- **OL 21**, Application for Modification to Occupational License
- **OL 73**, Application for Temporary Branch Location
- **OL 15**, Certificate of Corporate Officers and/or Directors in Lieu of Corporate Minutes
- **OL 15A**, Certificate in Lieu of Certificate of Amendment to Articles of Organization, Limited Liability Company

## **ADDITIONAL ITEMS**

The following items are also needed as part of the application package:

- Copy of Board of Equalization Resale Permit (if selling at retail)
  - ♦ Required by Board of Equalization
  - ♦ Enables the licensee to collect taxes of sale
  - ♦ No fee, but deposit may be required
  - ♦ Apply through your local Board of Equalization offices *CVC Section 11617(a)(6)*
- "Place of Business" Inspection. After you have arranged an appointment with an Occupational Licensing Inspector he or she will:
  - ♦ Inspect the main business office where the lessor-retailer conducts business, whether or not retail sales are made from this location. *CVC Sections 11601 (a), (c)*
- Show proof of bond with corporate surety. *CCR, Title 13, Section 252.30(j)*
- Execute and file with the department an instrument designating the director as agent of the applicant for service of process. *CCR, Title 13, Section 252.20(j)*

## **VEHICLE LESSOR-RETAILER - FREQUENTLY ASKED QUESTIONS**

Listed below are the most frequently asked questions. This list is not all inclusive nor is it intended to be. If you have any questions, please contact your local Inspector or call (916) 657-6530.

### **Where can I obtain application forms?**

All forms and application packages can be ordered by calling (916) 657-6530 or printed or downloaded from the internet. Further licensing information is contained in the application package.

### **How long will it take for the department to process my application?**

The average time for processing an application may be up to 120 days to allow the Department time for investigation and processing of the license.

### **Does the department issue temporary permits?**

Pending the satisfaction of the department that the applicant has met the requirements for the license, the department may issue a temporary permit for a period not to exceed 120 days while it completes its investigation and determination of all facts relative to the qualifications of the applicant for the license.

*CVC Section 11607*

### **Where do I file my application?**

Application packages for vehicle lessor/retailers are submitted to Occupational Licensing Inspectors.

### **Where do I call if I have questions?**

If you have general licensing questions you may call (916) 657-6530.

### **What is the license renewal period?**

The vehicle lessor-retailer's license is renewed annually, based on the month the original license was issued. Renewals should be made before the expiration of the license. If you do not renew your license before it expires, you may renew your license within thirty (30) days following the expiration date by paying the annual renewal fee and a penalty equal to 100 percent of the original application fee. Renewals will not be accepted for licenses that have been expired for more than 30 days.

### **How do I renew my license?**

About 45 days before the expiration of your license you should receive a courtesy notice for renewal. After you complete the courtesy notice, you will need to mail your renewal form and fees to:

Department of Motor Vehicles  
Occupational Licensing Branch  
P.O. Box 932342 N224  
Sacramento, CA 94232-3420

If you do not receive a courtesy notice, please call (916) 657-6530.

### **What is live scan fingerprinting?**

Live Scan is inkless electronic fingerprinting. The fingerprints are electronically transmitted to the Department of Justice (DOJ) for completion of a criminal record check.

### **Who is affected by it?**

Anyone applying for the first time to be licensed as a vehicle salesperson, dealer, driving instructor or any other vehicle industry related occupation licensed by DMV will be live scan fingerprinted. It also applies to first time applicants for an ambulance driver certificate.

### **Why “Live Scan” fingerprinting?**

As a result of legislation in late 1997, DOJ has developed an automated background check process that requires digitized fingerprints (“Live Scan”). Beginning January 1, 2000, DOJ has asked that fingerprints be submitted by Live Scan rather than hard copy fingerprint cards. Digitizing the fingerprints enables the electronic transfer of the fingerprint image data along with personal descriptor information to computers at the DOJ in a matter of seconds, instead of the days required to send hard copy fingerprint cards through the mail. DOJ’s goal is to process 95% of the digitized fingerprints within 3 days.

### **When does it start?**

Live scan fingerprinting for DMV applicants will start January 1, 2000.

### **What is the cost to be live scan fingerprinted?**

The live scan fingerprinting service fee varies from about \$5 to \$20. The cost to electronically fingerprint the applicant is determined by the local live scan agency. According to DOJ, they can charge a fee sufficient to recover their costs. The \$32 DOJ criminal record check fee is also collected at the live scan site.

### **What will the applicant need to do to be live scan fingerprinted?**

The applicant can call the local police or sheriff’s department to find their local Live Scan sites that are open to the general public. The applicant can also call the department’s Occupational Licensing offices in Sacramento (916) 657-6621 or Los Angeles (213) 744-7563 and be mailed the department’s live scan request form. A sample of the department’s live scan form can be found on the Internet. If the licensee does not use the department’s live scan form, it is suggested that he/she take a sample of the form with them to ensure the live scan has all the information needed for transmitting the data to Occupational Licensing.

***Note: The applicant must go to a Live Scan site to be Live Scan fingerprinted before applying for an occupational license at DMV. If you have held an Occupational License issued by DMV in the past 3 years, you may not require a new set of prints.***

### **Where are the live scan sites?**

There are more than 130 live scan sites throughout the state. A current list of DOJ’s Live Scan stations is available through DOJ’s internet web page. The internet address is:

<http://caag.state.ca.us/app/contact.pdf>

Or, you may call your local police or sheriff’s department for the nearest Live Scan station that is available to the general public.

### **What are the benefits of Live Scan?**

Live Scan will avoid many of the problems associated with ink prints, such as smudging, smearing, and over or under inking. A major benefit of Live Scan is in processing speed since nearly all of those without criminal records are done within 3 days. Rolled ink prints (traditionally submitted on a fingerprint card) can take 10 to 12 days to process and up to 60 days if there is a criminal record.

## **LICENSING AUTHORITY FOR VEHICLE LESSOR-RETAILER**

**California Vehicle Code.** Sections 286 (i) and (j), 373, 11600 et seq., and 11700 et seq. The California Vehicle Code is available for purchase from the Department of Motor Vehicles.

### *Dealer: Exclusions*

286. The term “dealer” does not include any of the following:

- (a) Insurance companies, banks, finance companies, public officials, or any other person coming into possession of vehicles in the regular course of business, who sells vehicles under a contractual right or obligation, in performance of an official duty, or in authority of any court of law, if the sale is for the purpose of saving the seller from loss or pursuant to the authority of a court.

- (b) Persons who sell or distribute vehicles of a type subject to registration for a manufacturer to vehicle dealers licensed under this code, or who are employed by manufacturers or distributors to promote the sale of vehicles dealt in by those manufacturers or distributors. However, any of those persons who also sell vehicles at retail are vehicle dealers and are subject to this code.
- (c) Persons regularly employed as salespersons by vehicle dealers licensed under this code while acting within the scope of that employment.
- (d) Persons engaged exclusively in the bona fide business of exporting vehicles or of soliciting orders for the sale and delivery of vehicles outside the territorial limits of the United States, if no federal excise tax is legally payable or refundable on any of the transactions. Persons not engaged exclusively in the bona fide business of exporting vehicles, but who are engaged in the business of soliciting orders for the sale and delivery of vehicles, outside the territorial limits of the United States are exempt from licensure as dealers only if their sales of vehicles produce less than 10 percent of their total gross revenue from all business transacted.
- (e) Persons not engaged in the purchase or sale of vehicles as a business, who dispose of any vehicle acquired and used in good faith, for their own personal use, or for use in their business, and not for the purpose of avoiding the provisions of this code.
- (f) Persons who are engaged in the purchase, sale, or exchange of vehicles, other than motorcycles subject to identification under this code, which are not intended for use on the highways.
- (g) Persons temporarily retained as auctioneers solely for the purpose of disposing of vehicle stock inventories by means of public auction on behalf of the owners at the owner's place of business, or as otherwise approved by the department, if intermediate physical possession or control of, or an ownership interest in, the inventory is not conveyed to the persons so retained.
- (h) Persons who are engaged exclusively in the business of purchasing, selling, servicing, or exchanging racing vehicles, parts for racing vehicles, and trailers designed and intended by the manufacturer to be used exclusively for carrying racing vehicles. For purposes of this subdivision, "racing vehicle" means a motor vehicle of a type used exclusively in a contest of speed or in a competitive trial of speed which is not intended for use on the highways.
- (i) Any person who is a lessor.
- (j) Any person who is a renter.
- (k) Any salvage pool.
- (l) Any yacht broker who is subject to the Yacht and Ship Brokers Act (Article 2 (commencing with Section 700) of Chapter 5 of Division 3 of the Harbors and Navigation Code) and who sells used boat trailers in conjunction with the sale of a vessel.
- (m) Any licensed automobile dismantler who sells vehicles that have been reported for dismantling as provided in Section 11520.
- (n) The Director of Corrections when selling vehicles pursuant to Section 2813.5 of the Penal Code.
- (o) Any public or private nonprofit charitable, religious, or educational institution or organization that sells vehicles if all of the following conditions are met:
  - (1) The proceeds of the sale of the vehicles are retained by that institution or organization for its charitable, religious, or educational purposes.
  - (2) The vehicles sold were donated to the institution or organization.
  - (3) They meet all of the applicable equipment requirements of Division 12 (commencing with Section 24000) and have been issued a certificate pursuant to Section 44015 of the Health and Safety Code.
  - (4) The institution or organization has qualified for state tax-exempt status under Section 23701d of the Revenue and Taxation Code, and federal tax-exempt status under Section 501(c)(3) of the Internal Revenue Code.
- (p) Any motor club, as defined in Section 12142 of the Insurance Code, that does not arrange or negotiate individual motor vehicle purchase transactions on behalf of its members but refers members to a new motor

vehicle dealer for the purchase of a new motor vehicle and does not receive a fee from the dealer contingent upon the sale of the vehicle.

*Amended Ch. 546, Stats. 1988. Effective January 1, 1989.*

*Amended Ch. 923, Stats. 1989. Effective January 1, 1990.*

*Amended Ch. 13, Stats. 1991. Effective February 13, 1991.*

*Amended Ch. 928, Stats. 1991. Effective October 14, 1991.*

*Amended Ch. 127, Stats. 1992. Effective January 1, 1993.*

*Amended Ch. 1253, Stats. 1994. Effective January 1, 1995.*

### *Lessor-Retailer*

373. A “lessor-retailer” is a lessor or renter who, except under the circumstances described in subdivision (a) of Section 286, makes a retail sale or sales of a previously leased or rented vehicle or vehicles to other than any of the following:

- (a) The lessee of the vehicle, or the person who, for a period of at least one year, has been designated by the lessee as the driver of the vehicle covered by a written lease agreement.
- (b) A buyer for agricultural, business, or commercial purposes.
- (c) A government or governmental agency or instrumentality.

*Amended Ch. 561, Stats. 1979. Effective January 1, 1980.*

### *License or Temporary Permit Required*

11600. It shall be unlawful for any lessor-retailer to make a retail sale of a vehicle of a type subject to registration without having first procured either a vehicle dealer license or a lessor-retailer license or temporary permit issued by the department or when such license or temporary permit issued by the department has been canceled, suspended, revoked, or invalidated or has expired.

*Added Ch. 1284, Stats. 1976. Effective January 1, 1977.*

### *Application for License*

11601. (a) Every lessor-retailer who sells at retail a vehicle of a type subject to registration shall make application to the department for a license. The applicant shall submit proof of his status as a bona fide lessor-retailer as may reasonably be required by the department.

(b) An application shall be made for the principal place of business, and a separate branch office application shall be made for each branch office location of the licensee as shall be operated and maintained by the applicant in conjunction with the retail sale or sales of vehicles.

(c) “Principal place of business,” for the purposes of this chapter, means the place designated by the lessor-retailer as the main business or office location in California whether or not retail sales are made from such location.

*Added Ch. 1284, Stats. 1976. Effective January 1, 1977.*

### *Contents of Application*

11602. (a) The department shall prescribe and provide forms to be used for application for licenses to be issued under the terms and provisions of this chapter and require of such applicants, where appropriate as a condition precedent to issuance of such license, such information, including but not limited to, fingerprints and personal history statements, touching on and concerning the applicant’s character, honesty, integrity and reputation as it may consider necessary; provided, however, that every application for a lessor-retailer license shall contain, in addition to such information that the department may require, a statement of the following facts:

- (1) The name and residence address of the applicant and the trade name, if any, under which he intends to conduct his business; and if the applicant be a partnership, the name and residence address of each member thereof, whether a limited or general partner, and the name under which the partnership business is to be conducted; and if the applicant be a corporation, the name of the corporation and the name and address of each of its principal officers and directors.



- (2) A complete description, including the city, town or village with the street and number, if any, of its principal place of business in California and such other and additional branch location or locations.
- (b) Upon receipt of an application accompanied with the appropriate fee, the department shall make a thorough investigation of the information contained in the application.

*Added Ch. 1284, Stats. 1976. Effective January 1, 1977.*

#### *Issuance or Refusal of License*

11603. (a) The department may issue, or for reasonable cause shown, refuse to issue, a license to any applicant applying for a lessor-retailer license or branch office location.
- (b) The license shall contain the applicant's name, location address and the general distinguishing number assigned to the applicant.

*Added Ch. 1284, Stats. 1976. Effective January 1, 1977.*

#### *Refusal to Issue: Grounds*

11604. The department may refuse to issue a lessor-retailer license when it makes any of the following determinations:

- (a) The applicant has outstanding an unsatisfied final court judgment rendered in connection with an activity licensed under the authority of this division.
- (b) The applicant was previously the holder, or a managerial employee of the holder, of a license issued under this division which was revoked for cause and never reissued by the department, or which was suspended for cause and the terms of suspension have not been fulfilled.
- (c) The applicant was previously a business representative whose license issued under this division was revoked for cause and never reissued or was suspended for cause and the terms of suspension have not been fulfilled.
- (d) If the applicant is a business, a business representative was previously the holder of a license, or was a business representative of a business whose license, issued under this division, was revoked for cause and never reissued or was suspended for cause and the terms of suspension have not been fulfilled; or, by reason of the facts and circumstances related to the organization, control, and management of the business, the operation of that business will be directed, controlled, or managed by individuals who, by reason of their conviction of violations of this code, would be ineligible for a license and, by licensing that business, the purposes of this chapter would be defeated.
- (e) The applicant, or a business representative if the applicant is a business, has been convicted of a crime or committed any act or engaged in conduct involving moral turpitude which is substantially related to the qualifications, functions, or duties of the licensed activity. A conviction after a plea of nolo contendere is a conviction within the meaning of this section.
- (f) The applicant was previously the holder of an occupational license issued by another state, authorizing the same or similar activities of a license issued under this division; and that license was revoked or suspended for cause and was never reissued, or was suspended for cause, and the terms of suspension have not been fulfilled.
- (g) The information contained in the application is incorrect.
- (h) A decision of the department to cancel, suspend, or revoke a license has been made, and the applicant was a business representative of the business regulated under that license.
- (i) The applicant does not have a principal place of business in California.

*Amended Ch. 1563, Stats. 1990. Effective January 1, 1991.*

*Amended Sec. 49, Ch. 877, Stats. 1998. Effective January 1, 1999.*



### *Suspension, Revocation, or Refusal to Issue License: Additional Grounds*

11604.1. Any cause specified in this chapter as a cause to suspend or revoke the license issued to a lessor-retailer is a cause to refuse to issue a license to a lessor-retailer.

*Added Ch. 1563, Stats. 1990. Effective January 1, 1991.*

### *Interim Refusal to Issue or Suspension of License*

11604.5. (a) The department, after notice and hearing, on an interim basis, may refuse to issue or may suspend a license issued under this chapter when the applicant or licensee, or a business representative if the applicant or licensee is a business, has been convicted of a crime involving moral turpitude which is substantially related to the qualifications, functions, or duties of the licensed activity, if an appeal of the conviction is pending or the conviction has otherwise not become final. A conviction after a plea of nolo contendere is a conviction within the meaning of this section.

(b) When a conviction, upon which an interim refusal to issue or suspension under subdivision (a) is based, is affirmed on appeal or otherwise becomes final, the refusal to issue or suspension shall automatically take effect as a denial or revocation, as the case may be, of the license. If the interim refusal to issue or suspension was stayed under probationary terms and conditions, the subsequent automatic denial or revocation shall also be stayed under the same terms and conditions for a term not to exceed the original term of probation for the interim refusal to issue or suspension.

(c) If a conviction, upon which an interim refusal to issue or suspension under subdivision (a) is based, is reversed on appeal, the refusal or suspension shall be set aside immediately by the department.

*Added Ch. 1563, Stats. 1990. Effective January 1, 1991.*

### *Hearing Upon Refusal*

11605. (a) Upon refusal of the department to issue a license to a lessor-retailer, the applicant shall be entitled to demand in writing a hearing before the director or his representative within 60 days after notice of refusal.

(b) The hearing shall be conducted pursuant to the provisions of Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

*Added Ch. 1284, Stats. 1976. Effective January 1, 1977.*

### *Probationary License*

11606. Except where the provisions of this code require the refusal to issue a license, the department may issue a probationary license subject to conditions to be observed by the licensee in the exercise of the privilege granted. The conditions to be attached to the exercise of the privilege shall not appear on the face of the license but shall be such as may, in the judgment of the department, be in the public interest and suitable to the qualifications of the applicant as disclosed by the application and investigation by the department of the information contained therein.

*Added Ch. 1284, Stats. 1976. Effective January 1, 1977.*

### *Temporary Permit*

11607. Pending the satisfaction of the department that the applicant has met the requirements under this chapter, it may issue a temporary permit to any person applying for a lessor-retailer license or branch office location. The temporary permit shall permit the operation by the lessor-retailer while the department is completing its investigation and determination of all facts relative to the qualifications of the applicant to such license. The department may cancel such temporary permit when it has determined or has reasonable cause to believe that the application is incorrect or incomplete or the temporary permit was issued in error. Such temporary permit shall be invalid when canceled or when the applicant's license has been issued or refused.

*Added Ch. 1284, Stats. 1976. Effective January 1, 1977.*

### *Certificate of Convenience*

11608. The department may issue a certificate of convenience to the executor, executrix, administrator or administratrix of the estate of a deceased holder of a valid license issued under this chapter, or if no executor, executrix, administrator or administratrix has been appointed, and until a certified copy of an order making such appointment is filed with the department, to the widow or other heir otherwise entitled to conduct the business of the deceased, permitting such person to exercise the privileges granted by such license for a period of one year from and after the date of death and necessary one-year renewals thereafter, pending, but not later than, disposal of the business and qualification of the vendee of the business or such surviving widow, heir or other persons for such license under the provisions of this chapter. The department may restrict or condition the license and attach to the exercise of the privileges thereunder such terms and conditions as in its judgment the protection of the public requires.

*Added Ch. 1284, Stats. 1976. Effective January 1, 1977.*

### *Posting of License; Other Sign Requirements*

11609. Each office location operated and maintained by a lessor-retailer in conjunction with its retail sale of a vehicle or vehicles shall have posted in a place conspicuous to the public the license issued by the department to the lessor, and shall have erected or posted thereon such signs or devices providing information relating to the lessor-retailer's name, the office location and the office address, to enable any person doing business with such lessor to identify him properly.

*Added Ch. 1284, Stats. 1976. Effective January 1, 1977.*

### *Notice to Public: Inspection of Vehicle*

11609.5. Every lessor-retailer who displays or offers one or more used vehicles for sale at retail shall post a notice not less than 8 inches high and 10 inches wide, in a place conspicuous to the public, which states the following:

“The prospective purchaser of a vehicle may, at his or her own expense and with the approval of the lessor-retailer, have the vehicle inspected by an independent third party either on or off these premises.”

*Added Ch. 1563, Stats. 1990. Effective January 1, 1991.*

### *Change of Principal Place of Business or Branch Office*

11610. (a) If the lessor-retailer changes the location of its principal place of business or any branch office location in California, the lessor-retailer shall immediately upon making the change notify the department.

(b) If a lessor-retailer, for any reason, ceases to be in possession of its principal place of business or any branch office location, the lessor-retailer shall immediately notify the department, and shall deliver to the department the lessor-retailer license issued for the location, and, upon demand, all report of sale books in his or her possession.

(c) Any person licensed under this chapter who has closed his or her principal place of business may be served with process issued pursuant to Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code by registered mail at that place of business, unless the person has notified the department in writing of another address where service may be made.

*Amended Ch. 751, Stats. 1988. Effective January 1, 1989.*

*Amended Ch. 216, Stats. 1990. Effective January 1, 1991.*

### *Bond*

11612. (a) Before any lessor-retailer license shall be issued or renewed by the department to any applicant therefor, the applicant shall procure and file with the department a bond meeting the same requirements as specified for a vehicle dealer's license in Sections 11710 and 11710.2.

- (b) Any cause of action or claim specified in Section 11711 against a vehicle dealer's bond shall also be a cause of action or claim against a lessor-retailer's bond.

*Amended Ch. 517, Stats. 1982. Effective January 1, 1983.*

### *Suspension or Revocation of License*

11613. (a) The department, after notice and hearing, may suspend or revoke the license issued to a lessor-retailer upon determining that the person to whom the license was issued is not lawfully entitled thereto, or has done any of following:

- (1) Filed an application for the license using a false or fictitious name not registered with the proper authorities, or knowingly made any false statement or knowingly concealed any material fact, in the application for the license.
- (2) Used a false or fictitious name, knowingly made any false statement or knowingly concealed any material fact in any application for the registration of a vehicle, or otherwise committed a fraud in the application.
- (3) Knowingly purchased, sold or otherwise acquired or disposed of a stolen motor vehicle.
- (4) Violated any provision of Division 3 (commencing with Section 4000) or a rule or regulation adopted pursuant thereto.
- (5) Violated any provision of Division 4 (commencing with Section 10500) or rule or regulation adopted pursuant thereto.
- (6) Violated any provision of this chapter or rule or regulation adopted pursuant thereto.
- (7) Violated any provision of Chapter 2b (commencing with Section 2981) of Title 14 of Part 4 of Division 3 of the Civil Code or rule or regulation adopted pursuant thereto under the authority of Section 1651.
- (8) Submitted a check, draft or money order to the department for any obligation or fee due the state which was thereafter dishonored or refused payment upon presentation.
- (9) Caused any person to suffer any loss or damage by reason of any fraud or deceit practiced on or fraudulent representations made to that person in the sale of a vehicle or parts or accessories thereof.

For purposes of this subdivision, "fraud" includes any act or omission which is included within the definition of either "actual fraud" or "constructive fraud" as defined in Sections 1572 and 1573 of the Civil Code, and "deceit" has the same meaning as defined in Section 1710 of the Civil Code. In addition, "fraud" and "deceit" include, but are not limited to, a misrepresentation in any manner, whether intentionally false or due to gross negligence, of a material fact; a promise or representation not made honestly and in good faith; an intentional failure to disclose a material fact; and any act within Section 484 of the Penal Code.

For purposes of this subdivision, "person" also includes a governmental entity.

- (b) Any of the causes specified in this chapter as a cause for refusal to issue a license to a lessor-retailer applicant is cause to suspend or revoke a license issued to a lessor-retailer.
- (c) Every hearing provided for in this section shall be conducted pursuant to Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

*Amended Ch. 1563, Stats. 1990. Effective January 1, 1991.*

### *Compromise Settlement Agreement*

11613.5. (a) After the filing of an accusation under this chapter, the director may enter into a stipulated compromise settlement agreement with the consent of the licensee on terms and conditions mutually agreeable to the director, the respondent licensee, and the accuser without further hearing or appeal. The agreement may include, but is not limited to, a period of probation or monetary penalties, or both. The monetary penalty shall not exceed one thousand dollars (\$1,000) for each violation, and it shall be based on the nature of the violation and the effect of the violation on the purposes of this chapter.

- (b) A compromise settlement agreement may be entered before, during, or after the hearing, but is valid only if executed and filed pursuant to subdivision (d) before the proposed decision of the hearing officer, if any, is adopted or the case is decided.
- (c) The department shall adopt, by regulation, a schedule of maximum and minimum amounts of monetary penalties, the payment of which may be included as a term or condition of a compromise settlement agreement entered under subdivision (a). Any monetary penalty included in a compromise settlement agreement shall be within the range of monetary penalties in that schedule.
- (d) Any compromise settlement agreement entered under this section shall be signed by the director, the respondent licensee, and the accuser, or by their authorized representatives. The director shall file, or cause to be filed, the agreement with the Office of Administrative Hearings, together with the department's notice of withdrawal of the accusation or statement of issues upon which the action was initiated.
- (e) If the respondent licensee fails to perform all of the terms and conditions of the compromise settlement agreement, the agreement is void and the department may take any action authorized by law notwithstanding the agreement, including, but not limited to, refiling the accusation or imposing license sanctions.

*Added Ch. 1022, Stats. 1985. Effective January 1, 1986.*

### *Unlawful Acts*

11614. No lessor-retailer licensed under this chapter shall do any of the following in connection with any activity for which this license is required:

- (a) Make or disseminate, or cause to be made or disseminated, before the public in this state, in any newspaper or other publication, or any advertising device, or by oral representation, or in any other manner or means whatever, any statement ( )<sup>1</sup> *that* is untrue or misleading and ( )<sup>1</sup> *that* is known, or which by the exercise of reasonable care should be known, to be untrue or misleading; or make or disseminate, or cause to be ( )<sup>2</sup> *made or* disseminated, any statement as part of a plan or scheme with the intent not to sell any vehicle, or ( )<sup>3</sup> service so advertised , at the price stated therein, or as so advertised.
- (b) Advertise, or offer for sale in any manner, any vehicle not actually for sale at the premises of the lessor-retailer or available within a reasonable time to the lessor-retailer at the time of the advertisement or offer.
- (c) Fail within 48 hours to give, in writing, notification to withdraw any advertisement of a vehicle that has been sold or withdrawn from sale.
- (d) Advertise any specific vehicle for sale without identifying the vehicle by either its vehicle identification number or license number.
- (e) Advertise the total price of a vehicle without including all costs to the purchaser at the time of delivery at the lessor-retailer's premises, except sales tax, vehicle registration fees, finance charges, certificate of compliance or noncompliance fees not exceeding thirty-five dollars (\$35) pursuant to any statute, and any dealer documentary preparation charge. The dealer documentary charge shall not exceed thirty-five dollars (\$35).
- (f) Fail to disclose, in the newspaper display advertisement of a vehicle for sale, that there will be added to the advertised total price , at the time of sale, charges for sales tax, vehicle registration fees, the fee charged by the state for the issuance of any certificate of compliance or noncompliance pursuant to any statute, finance charges, or any dealer documentary preparation charge.

For purposes of this subdivision, "newspaper display advertisement" means any advertisement in a newspaper ( )<sup>1</sup> *that* is two or more newspaper columns in width or one newspaper column in width and more than seven inches in length.

- (g) Advertise or otherwise represent, or knowingly allow to be advertised or represented on the lessor-retailer's behalf or at the lessor-retailer's place of business, that no downpayment is required in connection with the sale of a vehicle when a downpayment is in fact required and the buyer is advised or ( )<sup>4</sup> induced to finance the downpayment by a loan in addition to any other loan financing the remainder of the purchase price of the vehicle.
- (h) Refuse to sell a vehicle to any person at the advertised total price, exclusive of sales tax, vehicle registration fees, finance charges, certificate of compliance or noncompliance pursuant to any statute, and any dealer

documentary preparation charge, which charges shall not exceed thirty-five dollars (\$35) for the documentary preparation charge and thirty-five dollars (\$35) for the certificate of compliance or noncompliance pursuant to any statute, while the vehicle remains unsold or unleased, unless the advertisement states the advertised total price is good only for a specified time and the time has elapsed.

- (i) Engage in the business for which the licensee is licensed without having in force and effect a bond required by Section 11612.
- (j) Engage in the business for which the lessor-retailer is licensed without at all times maintaining a principal place of business and any branch office location required by this chapter.
- (k) Permit the use of the lessor-retailer license, supplies, or books by any other person for the purpose of permitting that person to engage in the sale of vehicles required to be registered under this code, or to permit the use of the lessor-retailer license, supplies, or books to operate a branch office location to be used by any other person, if, in either situation, the licensee has no financial or equitable interest or investment in the vehicles sold by, or the business of, or branch office location used by, the person, or has no interest or investment other than commissions, compensations, fees, or any other thing of value received for the use of the lessor-retailer license, supplies, or books to engage in the sale of vehicles.
- (l) Violate any provision of Article 10 (commencing with Section 28050) of Chapter 5 of Division 12.
- (m) Represent the dealer documentary preparation charge, or certificate of compliance or noncompliance fee, as a governmental fee.
- (n) Advertise free merchandise, gifts, or services provided by a lessor-retailer contingent on the purchase of a vehicle. "Free" includes merchandise or services offered for sale at a price less than the lessor-retailer's cost of the merchandise or services.
- (o) Advertise vehicles and related goods or services with the intent not to supply reasonably expectable demand, unless the advertisement discloses a limitation of quantity.
- (p) Use the term "rebate" or similar words such as "cash back" in advertising the sale of a vehicle.
- (q) Require a person to pay a higher price for a vehicle and related goods or services for receiving advertised credit terms than the cash price the same person would have to pay to purchase the same vehicle and related goods or services. For the purpose of this subdivision, "cash price" has the meaning as defined in subdivision (e) of Section 2981 of the Civil Code.
- (r) Misrepresent the authority of a representative or agent to negotiate the final terms of a transaction.
- (s) Violate any law prohibiting bait and switch advertising, including, but not limited to, the guides against bait advertising set forth in Part 238 of Title 16 of the Code of Federal Regulations, as those regulations read on January 1, 1988.
- (t) Make any untrue or misleading statement indicating that a vehicle is equipped with all the factory installed optional equipment the manufacturer offers, including, but not limited to, a false statement that a vehicle is "fully factory equipped."
- (u) Advertise any underselling claim, such as "we have the lowest prices" or "we will beat any dealer's price," unless the lessor-retailer has conducted a recent survey showing that the lessor-retailer sells its vehicles at lower prices than any other licensee in its trade area and maintains records to adequately substantiate the ( )<sup>5</sup> ***claim***. The substantiating records shall be made available to the department upon request.
- (v) To display or offer for sale any used vehicle unless there is affixed to the vehicle the Federal Trade Commission's Buyer's Guide as required by Part 455 of Title 16 of the Code of Federal Regulations.

*Amended Ch. 1576, Stats. 1990. Effective January 1, 1991. Supersedes Ch. 1563.*

*Amended Ch. 1054, Stats. 1991. Effective January 1, 1992.*

*Amended Sec. 189, Ch. 83, Stats. 1999. Effective January 1, 2000.*

*The 1999 amendment added the italicized material, and at the point(s) indicated, deleted the following:*

*"which"*

*"so"*

*"sell"*

*"of a vehicle when a downpayment is in fact required and the buyer is advised or"*

*"claims"*



### *Additional Unlawful Acts*

11615. It shall be unlawful and a violation of this code for a lessor-retailer licensed under this chapter when selling at retail a vehicle in a transaction for which this license is required:

- (a) To deliver, following sale, a vehicle for operation on California highways, if such vehicle does not meet all of the equipment requirements of Division 12 (commencing with Section 24000) of this code.
- (b) To fail to deliver to a transferee lawfully entitled thereto a properly endorsed certificate of ownership.
- (c) To violate any of the terms or provisions of Part 5 (commencing with Section 10701) of Division 2 of the Revenue and Taxation Code or rules and regulations adopted pursuant thereto or adopted pursuant to Section 1651 of this code.
- (d) To take a vehicle in trade in part or total payment for a vehicle sold by the lessor-retailer.
- (e) To sell a vehicle which has not been previously leased, bailed or rented or acquired or contracted for lease or rental by the lessor-retailer.
- (f) To display a vehicle for sale at a location other than the principal place of business or branch office authorized by the department for that lessor-retailer.

*Amended Ch. 1563, Stats. 1990. Effective January 1, 1991.*

### *Sales Tax Payment*

11615.5. It is unlawful and a violation of this code for a person holding a license under this chapter to make a retail sale of a motor vehicle, except to the lessee of such vehicle, required to be registered pursuant to Division 3 (commencing with Section 4000) or subject to identification pursuant to Division 16.5 (commencing with Section 38000) if such person files with the department a report of sale as provided in Section 4456 with respect to such retail sale, without making the return and payment of any sales tax due and required by Section 6451 of the Revenue and Taxation Code.

*Amended Ch. 373, Stats. 1979. Effective January 1, 1980.*

### *Refund of Excess Fees*

11616. If a purchaser of a vehicle pays to the lessor-retailer an amount for the licensing or transfer of title of the vehicle, which amount is in excess of the actual fees due for such licensing or transfer, or which amount is in excess of the amount which has been paid, prior to the sale, by the lessor-retailer to the state in order to avoid penalties that would have accrued because of late payment of such fees, the lessor-retailer shall return such excess amount to the purchaser, whether or not such purchaser requests the return of the excess amount.

*Added Ch. 1284, Stats. 1976. Effective January 1, 1977.*

### *Automatic Cancellation of License*

11617. (a) The license provided for in this chapter shall be automatically canceled upon the happening of any of the following:

- (1) The abandonment of the principal place of business of the lessor-retailer or the change thereof without notice to the department as provided in Section 11610.
- (2) The failure of the licensee to maintain an adequate bond or to procure and file another bond as required by Section 11612 prior to the effective date of the termination by the surety of any existing bond.
- (3) The voluntary or involuntary surrender for any cause by the licensee of the license, except that a surrender of the license, or cessation of business by the licensee, or the suspension or revocation of the corporate status of the licensee does not preclude the filing of an accusation for revocation or suspension of the surrendered license as provided in Section 11613, and does not affect the department's decision to suspend or revoke the license. The department's determination to suspend or revoke the license may be considered in issuing or refusing to issue any subsequent license authorized by this division to that licensee, or any business representative of that licensee.

- (4) Notification to the department that the person designated as licensee has changed.
- (5) The suspension or cancellation of the corporate status of the licensee.
- (6) The suspension or revocation of the seller's permit of the licensee by the State Board of Equalization.
- (b) The branch office location license provided for in this chapter shall be automatically canceled upon the abandonment of the branch office location of the lessor-retailer or the change of that branch office without notice to the department as provided in Section 11610.

*Amended Ch. 1563, Stats. 1990. Effective January 1, 1991.*

#### *Temporary Suspension*

11618. The department may, pending a hearing, temporarily suspend the license issued to a lessor-retailer for a period not to exceed 30 days, if the director finds that such action is required in the public interest. In any such case a hearing shall be held and a decision thereof issued within 30 days after notice of the temporary suspension.

Every hearing as provided for in this section shall be pursuant to the provisions of Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

*Added Ch. 1284, Stats. 1976. Effective January 1, 1977.*

#### *Expiration and Renewal*

11620. (a) Every occupational license issued under this chapter shall be valid for a period of one year from midnight of the last day of the month of issuance. Except as provided in subdivision (c), renewal of an occupational license for the ensuing year may be obtained by the person to whom the occupational license was issued upon application to the department and payment of the fee provided in this code.

(b) Every application for the renewal of an occupational license which expires pursuant to this section shall be made by the person to whom issued not more than 90 days prior to the expiration date, and shall be made by presenting the completed application form provided by the department and by payment of the full annual renewal fee for the occupational license.

(c) If the application for renewal of the occupational license is not made by midnight of the expiration date, the application may be made within 30 days following expiration of the license by paying the annual renewal fee and a penalty fee equal to the amount of the original application fee for each occupational license held.

(d) In no event may the licensee renew the occupational license after the expiration of the 30-day period authorized in subdivision (c).

*Amended Ch. 499, Stats. 1984. Effective January 1, 1985.*

#### *License or Temporary Permit Required*

11700. No person shall act as a dealer, remanufacturer, manufacturer, or transporter, or as a manufacturer branch, remanufacturer branch, distributor, or distributor branch, without having first been issued a license as required in Section 11701 or temporary permit issued by the department, except that, when the license or temporary permit has been canceled, suspended, or revoked or has expired, any vehicle in the dealer's inventory and owned by the dealer when the dealer ceased to be licensed may be sold at wholesale to a licensed dealer. The former licensee shall give the purchasing dealer a statement of facts stating that the seller is not a licensed dealer. Any vehicle on consignment with the dealer when the dealer ceased to be licensed shall be returned to the consignor. Any vehicle in the dealer's possession, but not owned by the dealer and not on consignment when the dealer ceased to be licensed, shall be returned to the owner of the vehicle.

*Amended Ch. 1563, Stats. 1990. Effective January 1, 1991.*

#### *Exemption*

11700.1. A dealer who does not have an established place of business in this state but who is currently authorized to do business as, and who has an established place of business as, a vehicle dealer in another state is not subject



to licensure under this article if the business transacted in California is limited to the importation of vehicles for sale to, or the export of vehicles purchased from, persons licensed in California under this chapter.

*Added Ch. 1088, Stats. 1979. Effective September 28, 1979.*

#### *Dealer's License: Autobroker's Endorsement: Requirements and Prohibitions*

11700.2. A dealer who obtains an autobroker's endorsement to his or her dealer's license is subject to all of the licensing, advertising, and other statutory and regulatory requirements and prohibitions applicable to a dealer, regardless of whether that dealer acts as the buyer of a vehicle, the seller of a vehicle, or provides brokering services on behalf of another or others for the purpose of arranging, negotiating, assisting, or effectuating the sale of a vehicle not owned by that dealer.

*Added Sec. 4, Ch. 211, Stats. 1995. Effective January 1, 1996.*

#### *Application for License*

11701. Every manufacturer of, and manufacturer branch, remanufacturer of, and remanufacturer branch, distributor of, and distributor branch, transporter of, or dealer in vehicles of a type subject to registration, or snowmobiles or motorcycles of a type subject to identification, shall make application to the department for a license containing a general distinguishing number. The applicant shall submit proof of his or her status as a bona fide manufacturer, manufacturer branch, remanufacturer, remanufacturer branch, distributor, distributor branch, transporter, or dealer as may reasonably be required by the department.

*Amended Ch. 1286, Stats. 1983. Effective January 1, 1984.*

#### *Issuance or Refusal of License*

11702. The department may issue, or for reasonable cause shown, refuse to issue a license to any applicant applying for a manufacturer's, manufacturer's branch, remanufacturer's, remanufacturer's branch, distributor's, distributor's branch, transporter's, or dealer's license.

*Amended Ch. 1286, Stats. 1983. Effective January 1, 1984.*

#### *Refusal to Issue: Grounds*

11703. The department may refuse to issue a license to a manufacturer, manufacturer branch, remanufacturer, remanufacturer branch, distributor, distributor branch, transporter, or dealer, if it determines any of the following:

- (a) The applicant was previously the holder, or a managerial employee of the holder, of a license issued under this chapter which was revoked for cause and never reissued by the department, or which was suspended for cause and the terms of suspension have not been fulfilled.
- (b) The applicant was previously a business representative of a business whose license issued under this chapter was revoked for cause and never reissued or was suspended for cause and the terms of suspension have not been fulfilled.
- (c) If the applicant is a business, a business representative of the business was previously the holder of a license, or was a business representative of a business whose license, issued under this chapter was revoked for cause and never reissued or was suspended for cause and the terms of suspension have not been fulfilled; or, by reason of the facts and circumstances related to the organization, control, and management of the business, the operation of that business will be directed, controlled, or managed by individuals who, by reason of their conviction of violations of the provisions of this code, would be ineligible for a license and, by licensing the business, the purposes of this chapter would be defeated.
- (d) The applicant, or a business representative if the applicant is a business, has been convicted of a crime or committed any act or engaged in any conduct involving moral turpitude which is substantially related to the qualifications, functions, or duties of the licensed activity. A conviction after a plea of nolo contendere is a conviction within the meaning of this section.
- (e) The applicant was previously the holder of an occupational license issued by another state, authorizing the same or similar activities of a license issued under this division; and that license was revoked or suspended

for cause and was never reissued, or was suspended for cause, and the terms of suspension have not been fulfilled.

- (f) The information contained in the application is incorrect.
- (g) Upon investigation, the business history required by Section 11704 contains incomplete or incorrect information, or reflects substantial business irregularities.
- (h) A decision of the department to cancel, suspend, or revoke a license has been made and the applicant was a business representative of the business regulated under that license.

*Amended Ch. 1563, Stats. 1990. Effective January 1, 1991.*

*Amended Sec. 50, Ch. 877, Stats. 1998. Effective January 1, 1999.*

#### *Refusal to Issue: Additional Grounds*

11703.1. Any of the causes specified in this chapter as a cause to suspend or revoke the license issued to a dealer, manufacturer, manufacturer branch, remanufacturer, remanufacturer branch, distributor, distributor branch, or transporter, is cause to refuse to issue a license to a dealer, manufacturer, manufacturer branch, remanufacturer, remanufacturer branch, distributor, distributor branch, or transporter.

*Amended Ch. 1563, Stats. 1990. Effective January 1, 1991.*

#### *Refusal to Issue: Unsatisfied Final Judgment*

11703.2. The department may refuse to issue a license to a manufacturer, manufacturer branch, remanufacturer, remanufacturer branch, distributor, distributor branch, transporter, or dealer, when it determines that the applicant has outstanding an unsatisfied final judgment rendered in connection with the purchase, sale, or lease of any vehicle.

*Amended Ch. 1286, Stats. 1983. Effective January 1, 1984.*

#### *Reapplication*

11703.3. A person whose license has been revoked or application for a license has been denied may reapply for a license after a period of not less than one year has elapsed from the effective date of the decision revoking the license or denying the application; except that if the decision was entered under the authority of subdivision (a), (b), (c), or (g) of Section 11703, or 11703.2, or paragraph (6) of subdivision (a) of Section 11705, a reapplication accompanied by evidence satisfactory to the department that such grounds no longer exist may be made earlier than such one-year period.

*Amended Ch. 934, Stats. 1976. Effective January 1, 1977.*

#### *Additional Grounds for Refusal*

11703.4. The department may refuse to issue a license to a dealer when it determines that an applicant for a dealer's license has failed to effectively endorse an authorization for disclosure of an account or accounts relating to the operation of the dealership as provided for in Section 7473 of the Government Code.

*Added Ch. 1320, Stats. 1976. Effective January 1, 1977.*

#### *Application for License*

11704. (a) Every applicant who applies for a license pursuant to Section 11701 shall submit an application to the department on the forms prescribed by the department. Such applicant shall provide the department with information as to the applicant's character, honesty, integrity, and reputation, as the department may consider necessary. The department, by regulation, shall prescribe what information is required of such an applicant for the purposes of this subdivision.

(b) Upon receipt of an application for a license which is accompanied by the appropriate fee, the department shall, within 120 days, make a thorough investigation of the information contained in the application.

(c) Every person holding a license issued pursuant to Section 11701 shall notify the department, within 10 days,

of any change in the ownership or corporate structure of the licensee.

*Repealed and added Ch. 452, Stats. 1977. Effective January 1, 1978.*

*License: Education and Examination Requirement*

**11704.5 (a) ( )<sup>1</sup> Except as provided in subdivision (d), every person who applies for a dealer's license pursuant to Section 11701 for the purpose of transacting sales of used vehicles on a retail or wholesale basis only shall be required to take and successfully complete a written examination prepared and administered by the department before a license may be issued. The examination shall include, but need not be limited to, all of the following laws and subjects:**

- (1) Division 12 (commencing with Section 24000), relating to equipment of vehicles.
  - (2) Advertising.
  - (3) Odometers.
  - (4) Vehicle licensing and registration.
  - (5) Branch locations.
  - (6) Offsite sales.
  - (7) Unlawful dealer activities.
  - (8) Handling, completion, and disposition of departmental forms.
- (b) Prior to the first taking of an examination under subdivision (a), every applicant shall successfully complete a preliminary educational program of not less than four hours. The program shall address, but not be limited to, all of the following topics:
- (1) Chapter 2B (commencing with Section 2981) of Title 14 of Part 4 of Division 3 of the Civil Code, relating to motor vehicle sales finance.
  - (2) Motor vehicle financing.
  - (3) Truth in lending.
  - (4) Sales and use taxes.
  - (5) Division 12 (commencing with Section 24000), relating to equipment of vehicles.
  - (6) Advertising.
  - (7) Odometers.
  - (8) Vehicle licensing and registration.
  - (9) Branch locations.
  - (10) Offsite sales.
  - (11) Unlawful dealer activities.
  - (12) Air pollution control requirements.
  - (13) Regulations of the Bureau of Automotive Repair.
  - (14) Handling, completion, and disposition of departmental forms.
- (c) Instruction may be provided by generally accredited educational institutions, private vocational schools, correspondence institutions, and educational programs and seminars offered by professional societies, organizations, trade associations, and other educational and technical programs that meet the requirements of this section or by the department.
- (d) This section does not apply to any of the following:

- (1) ( )<sup>2</sup> ***An applicant for a new vehicle dealer's license*** or any employee of that dealer.
- (2) A person who holds a valid license as a dealer at the time of application.
- (3) A person who held a license as a dealer during the 36 months immediately preceding the date of the receipt of the application by the department.
- (4) A person who holds a valid license as an automobile dismantler , ( )<sup>3</sup> ***an employee of that dismantler, or an applicant for an automobile dismantler's license.***
- (5) An applicant for a motorcycle only dealer's license or any employee of that dealer.***
- (6) An applicant for a trailer only dealer's license or any employee of that dealer.***

*Added Sec. 3, Ch. 1008, Stats. 1996. Effective January 1, 1997.*

*Amended Sec. 10, Ch. 619, Stats. 1997. Effective January 1, 1998.*

*Amended Sec. 1, Ch. 230, Stats. 1999. Effective January 1, 2000.*

*The 1999 amendment added the italicized material, and at the point(s) indicated, deleted the following:*

*"Commencing January 1, 1998, except"*

*"A new motor vehicle dealer "*

*"or any employee of that dismantler. (4)*

#### *License: Examination Fee*

11704.7. Every person who applies to the department to take or retake the examination required under Section 11704.5 shall pay to the department a fee of sixteen dollars (\$16).

*Added Sec. 4, Ch. 1008, Stats. 1996. Effective January 1, 1997.*

#### *Suspension or Revocation*

11705. (a) The department, after notice and hearing, may suspend or revoke the license issued to a dealer, transporter, manufacturer, manufacturer branch, remanufacturer, remanufacturer branch, distributor, or distributor branch upon determining that the person to whom the license was issued is not lawfully entitled thereto, or has done any of the following:

- (1) Filed an application for the license using a false or fictitious name not registered with the proper authorities, or knowingly made any false statement or knowingly concealed any material fact, in the application for the license.
- (2) Made, or knowingly or negligently permitted, any illegal use of the special plates issued to the licensee.
- (3) Used a false or fictitious name, knowingly made any false statement, or knowingly concealed any material fact, in any application for the registration of a vehicle, or otherwise committed a fraud in the application.
- (4) Failed to deliver to a transferee lawfully entitled thereto a properly endorsed certificate of ownership.
- (5) Knowingly purchased, sold, or otherwise acquired or disposed of a stolen motor vehicle.
- (6) Failed to provide and maintain a clear physical division between the type of business licensed pursuant to this chapter and any other type of business conducted at the established place of business.
- (7) Willfully violated Section 3064 or 3065 or any rule or regulation adopted pursuant thereto.
- (8) Violated any provision of Division 3 (commencing with Section 4000) or any rule or regulation adopted pursuant thereto, or subdivision (a) of Section 38200.
- (9) Violated any provision of Division 4 (commencing with Section 10500) or any rule or regulation adopted pursuant thereto.
- (10) Violated any provision of Article 1 (commencing with Section 11700) of Chapter 4 of Division 5 or any rule or regulation adopted pursuant thereto.
- (11) Violated any provision of Part 5 (commencing with Section 10701) of Division 2 of the Revenue and Taxation Code or any rule or regulation adopted pursuant thereto.

- (12) Violated any provision of Chapter 2b (commencing with Section 2981) of Title 14 of Part 4 of Division 3 of the Civil Code or any rule or regulation adopted pursuant thereto.
- (13) Submitted a check, draft, or money order to the department for any obligation or fee due the state which was dishonored or refused payment upon presentation.
- (14) Has caused any person to suffer any loss or damage by reason of any fraud or deceit practiced on that person or fraudulent representations made to that person in the course of the licensed activity.

For purposes of this paragraph, “fraud” includes any act or omission which is included within the definition of either “actual fraud” or “constructive fraud” as defined in Sections 1572 and 1573 of the Civil Code, and “deceit” has the same meaning as defined in Section 1710 of the Civil Code. In addition, “fraud” and “deceit” include, but are not limited to, a misrepresentation in any manner, whether intentionally false or due to gross negligence, of a material fact; a promise or representation not made honestly and in good faith; an intentional failure to disclose a material fact; and any act within Section 484 of the Penal Code.

For purposes of this paragraph, “person” also includes a governmental entity.

- (15) Failed to meet the terms and conditions of an agreement entered into pursuant to Section 11707.
- (16) Violated Section 43151, 43152, or 43153 of, or subdivision (b) of Section 44072.10 of, the Health and Safety Code.
- (b) Any of the causes specified in this chapter as a cause for refusal to issue a license to a transporter, manufacturer, manufacturer branch, remanufacturer, remanufacturer branch, distributor, distributor branch, or dealer applicant is cause to suspend or revoke a license issued to a transporter, manufacturer, manufacturer branch, remanufacturer, remanufacturer branch, distributor, distributor branch, or dealer.
- (c) Except as provided in Section 11707, every hearing provided for in this section shall be conducted pursuant to Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

*Amended Ch. 1563, Stats. 1990. Effective January 1, 1991.*

*Amended Ch. 1220, Stats. 1994. Effective September 30, 1994.*

#### *Suspension or Revocation: Warranty Violation*

11705.4. (a) The department, after notice and hearing, may suspend or revoke the license issued to a dealer, transporter, manufacturer, manufacturer branch, distributor, or distributor branch upon determining that the person to whom the license was issued is not lawfully entitled thereto or has willfully violated the terms and conditions of any warranty responsibilities as set forth in Title 1.7 (commencing with Section 1790) of Part 4 of Division 3 of the Civil Code.

- (b) Every hearing as provided for in this section shall be pursuant to the provisions of Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

*Amended Ch. 873, Stats. 1977. Effective January 1, 1978.*

#### *Suspension or Revocation: Additional Ground*

11705.5. (a) The department, after notice and hearing, may suspend or revoke the license issued to a manufacturer upon determining that the manufacturer has violated paragraph (2) of subdivision (b) of Section 6262 of the Revenue and Taxation Code.

- (b) The hearing provided for in subdivision (a) shall be conducted pursuant to Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

*Added Ch. 1362, Stats. 1990. Effective September 27, 1990, terms of an urgency clause. Operative October 15, 1990.*

#### *Temporary Suspension*

11706. The department may, pending a hearing, temporarily suspend the license and special plates issued to a manufacturer, manufacturer branch, remanufacturer, remanufacturer branch, distributor, distributor branch, transporter, or dealer, for a period not to exceed 30 days, if the director finds that such action is required in the

public interest. In any such case, a hearing shall be held and a decision thereon issued within 30 days after notice of the temporary suspension.

Every hearing, as provided for in this section, shall be conducted pursuant to Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

*Amended Ch. 1286, Stats. 1983. Effective January 1, 1984.*

#### *Compromise Settlement Agreement*

11707. (a) After the filing of an accusation under this article, the director may enter into a stipulated compromise settlement agreement with the consent of the licensee on terms and conditions mutually agreeable to the director, the respondent licensee, and the accuser without further hearing or appeal. The agreement may include, but is not limited to, a period of probation or monetary penalties, or both. Except as provided in Section 11728, the monetary penalty shall not exceed one thousand dollars (\$1,000) for each violation, and it shall be based on the nature of the violation and the effect of the violation on the purposes of this article.

(b) A compromise settlement agreement may be entered before, during, or after the hearing, but is valid only if executed and filed pursuant to subdivision (d) before the proposed decision of the hearing officer, if any, is adopted or the case is decided.

(c) The department shall adopt, by regulation, a schedule of maximum and minimum amounts of monetary penalties, the payment of which may be included as a term or condition of a compromise settlement agreement entered under subdivision (a). Any monetary penalty included in a compromise settlement agreement shall be within the range of monetary penalties in that schedule.

(d) Any compromise settlement agreement entered under this section shall be signed by the director, the respondent licensee, and the accuser, or by their authorized representatives. The director shall file, or cause to be filed, the agreement with the Office of Administrative Hearings, together with the department's notice of withdrawal of the accusation or statement of issues upon which the action was initiated.

(e) If the respondent licensee fails to perform all of the terms and conditions of the compromise settlement agreement, the agreement is void and the department may take any action authorized by law, notwithstanding the agreement, including, but not limited to, refiling the accusation or imposing license sanctions.

*Amended Ch. 90, Stats. 1990. Effective May 9, 1990. Operative July 1, 1990.*

#### *Refusal to Issue License and Special-Plates Hearings*

11708. (a) Upon refusal of the department to issue a license and special plates to a manufacturer, manufacturer branch, remanufacturer, remanufacturer branch, distributor, distributor branch, transporter, or dealer, the applicant shall be entitled to demand, in writing, a hearing before the director or his or her representative within 60 days after notice of refusal.

(b) The hearing shall be conducted pursuant to Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

*Amended Ch. 1286, Stats. 1983. Effective January 1, 1984.*

#### *Established Place of Business: Posting*

11709. (a) A dealer's established place of business, and other sites or locations as may be operated and maintained by the dealer in conjunction with his or her established place of business, shall have posted, in a place conspicuous to the public in each and every location, the license issued by the department to the dealer and to each salesman employed by the dealer and shall have erected or posted thereon signs or devices providing information relating to the dealer's name and the location and address of the dealer's established place of business to enable any person doing business with the dealer to identify him or her properly. Every such sign erected or posted, on an established place of business, shall have an area of not less than two square feet per side displayed and shall contain lettering of sufficient size to enable the sign to be read from a distance of at least 50 feet. This section shall not apply to a dealer who is a wholesaler involved for profit only in the sale of vehicles between licensed dealers.



- (b) Notwithstanding Section 11704 and this section, a dealer may display vehicles at a fair, exposition, or similar exhibit without securing a branch license, if no actual sales are made at those events and the display does not exceed 30 days.
- (c) All vehicles displayed pursuant to subdivision (b) or (e) shall be identified by a sign or device providing information relating to the dealer's name and the location and address of the dealer's established place of business.
- (d) This section shall not be applicable to a dealer who deals only in off-highway vehicles subject to identification, as defined in Section 38012.
- (e) Notwithstanding Section 11704 and this section, a vessel dealer may display a trailer and may sell a trailer in conjunction with the sale of a vessel at a fair, exposition, or similar exhibit without securing a branch license, if the display does not exceed 30 days.

*Amended Ch. 147, Stats. 1989. Effective January 1, 1990.*

#### *Notice to Public: Inspection of Vehicle*

11709.1. Every dealer who displays or offers one or more used vehicles for sale at retail shall post a notice not less than 8 inches high and 10 inches wide, in a place conspicuous to the public, which states the following:

“The prospective purchaser of a vehicle may, at his or her own expense and with the approval of the dealer, have the vehicle inspected by an independent third party either on or off these premises.”

*Added Ch. 1563, Stats. 1990. Effective January 1, 1991.*

#### *Notice to Public: No Cancellation Period*

11709.2. Every dealer shall conspicuously display a notice, not less than eight inches high and 10 inches wide, in each sales office and sales cubicle of a dealer's established place of business where written terms of specific sale or lease transactions are discussed with prospective purchasers or lessees, and in each room of a dealer's established place of business where sale and lease contracts are regularly executed, which states the following:

“NO COOLING-OFF PERIOD”

California law does not provide for a “cooling-off” or other cancellation period for vehicle lease or purchase contracts. Therefore, you cannot later cancel such a contract simply because you change your mind, decide the vehicle costs too much, or wish you had acquired a different vehicle. After you sign a motor vehicle purchase or lease contract, it may only be canceled with the agreement of the seller or lessor or for legal cause, such as fraud.”

*Added Ch. 1092, Stats. 1993. Effective January 1, 1994. Operative July 1, 1994.*

*Amended Ch. 146, Stats. 1994. Effective January 1, 1995.*

#### *Bond; Service of Process*

11710. (a) Before any dealer's or remanufacturer's license is issued or renewed by the department to any applicant therefor, the applicant shall procure and file with the department a bond executed by an admitted surety insurer, approved as to form by the Attorney General, and conditioned that the applicant shall not practice any fraud or make any fraudulent representation which will cause a monetary loss to a purchaser, seller, financing agency, or governmental agency.

(b) A dealer bond shall be in the amount of ten thousand dollars (\$10,000). A dealer holding a dealer's license that was issued before July 1, 1990, that does not expire until 1990 or 1991, which has a bond in the amount of five thousand dollars (\$5,000) on file with the department, and whose license and bond remain continuously in full force and effect until the expiration of the license in 1990 or 1991, may continue to conduct business until that expiration date. Before the license is renewed by the department, the dealer shall procure and file a bond in the amount of ten thousand dollars (\$10,000). A remanufacturer bond shall be in the amount of twenty-five thousand dollars (\$25,000).



- (c) Liability under the bond is to remain at full value. If the amount of liability under the bond is decreased or there is outstanding a final court judgment for which the dealer or remanufacturer and sureties are liable, the dealer's or remanufacturer's license shall be automatically suspended. In order to reinstate the license and special plates, the licensee shall either file an additional bond or restore the bond on file to the original amount, or shall terminate the outstanding judgment for which the dealer or remanufacturer and sureties are liable.
- (d) A dealer's or remanufacturer's license, or renewal of the license, shall not be issued to any applicant therefor, unless and until the applicant files with the department a good and sufficient instrument, in writing, in which the applicant appoints the director as the true and lawful agent of the applicant upon whom all process may be served in any action, or actions, which may thereafter be commenced against the applicant, arising out of any claim for damages suffered by any firm, person, association, or corporation, by reason of the violation of the applicant of any of the terms and provisions of this code or any condition of the dealer's or remanufacturer's bond. The applicant shall stipulate and agree in the appointment that any process directed to the applicant, when personal service of process upon the applicant cannot be made in this state after due diligence and, in such a case, is served upon the director or, in the event of the director's absence from the office, upon any employee in charge of the office of the director, shall be of the same legal force and effect as if served upon the applicant personally. The applicant shall further stipulate and agree, in writing, that the agency created by the appointment shall continue for and during the period covered by any license that may be issued and so long thereafter as the applicant may be made to answer in damages for a violation of this code or any condition of the bond. The instrument appointing the director as the agent for the applicant for service of process shall be acknowledged by the applicant before a notary public. In any case where the licensee is served with process by service upon the director, one copy of the summons and complaint shall be left with the director or in the director's office in Sacramento or mailed to the office of the director in Sacramento. A fee of five dollars (\$5) shall also be paid to the director at the time of service of the copy of the summons and complaint. Service on the director shall be a sufficient service on the licensee if a notice of service and a copy of the summons and complaint are immediately sent by registered mail by the plaintiff or the plaintiff's attorney to the licensee. A copy of the summons and complaint shall also be mailed by the plaintiff or the plaintiff's attorney to the surety on the applicant's bond at the address of the surety given in the bond, postpaid and registered with request for return receipt. The director shall keep a record of all process so served upon the director, which record shall show the day and hour of service and shall retain the summons and complaint so served on file. Where the licensee is served with process by service upon the director, the licensee shall have and be allowed 30 days from and after the service within which to answer any complaint or other pleading which may be filed in the cause. However, for purposes of venue, where the licensee is served with process by service upon the director, the service is deemed to have been made upon the licensee in the county in which the licensee has or last had an established place of business.

*Amended Ch. 622, Stats. 1989. Effective January 1, 1990.*

#### *Return of Cash Deposit*

11710.2. If a deposit is given instead of the bond required by Section 11710 both of the following apply:

- (a) The director may order the deposit returned at the expiration of three years from the date an applicant for a dealer's license who has operated a business of selling vehicles under a temporary permit has ceased to do business, or three years from the date a licensee has ceased to be licensed, if the director is satisfied that there are no outstanding claims against the deposit. A judge of a municipal or superior court may order the return of the deposit prior to the expiration of three years upon evidence satisfactory to the judge that there are no outstanding claims against the deposit.
- (b) If either the director, department, or state is a defendant in any action instituted to recover all or any part of the deposit, or any action is instituted by the director, department, or state to determine those entitled to any part of the deposit, the director, department, or state shall be paid reasonable attorney fees and costs from the deposit. Costs shall include those administrative costs incurred in processing claims against the deposit.

*Amended Ch. 216, Stats. 1990. Effective January 1, 1991.*

*Fraud and Other Violations of Law: Failure to Pay for Vehicles: Priority of Claims*

11711. (a) If any person (1) shall suffer any loss or damage by reason of any fraud practiced on him or fraudulent representation made to him by a licensed dealer or one of such dealer's salesmen acting for the dealer, in his behalf, or within the scope of the employment of such salesman and such person has possession of a written instrument furnished by the licensee, containing stipulated provisions and guarantees which the person believes have been violated by the licensee, or (2) if any person shall suffer any loss or damage by reason of the violation by such dealer or salesman of any of the provisions of Division 3 (commencing with Section 4000) of this code, or (3) if any person is not paid for a vehicle sold to and purchased by a licensee, then any such person shall have a right of action against such dealer, his salesman, and the surety upon the dealer's bond, in an amount not to exceed the value of the vehicle purchased from or sold to the dealer.

(b) If the state or any political subdivision thereof shall suffer any loss or damage by reason of any fraud practiced on the state or fraudulent representation made to the state by a licensed dealer, or one of such dealer's representatives acting for the dealer, in his behalf, or within the scope of employment of such representatives, or shall suffer any loss or damage by reason of the violation of such dealer or representative of any of the provisions of Division 3 (commencing with Section 4000) of this code, or Part 5 (commencing with Section 10701), Division 2 of the Revenue and Taxation Code, the state or any political subdivision thereof, through the department, shall have a right of action against such dealer, his representative, and the surety upon the dealer's bond in an amount not to exceed the value of the vehicles involved.

(c) The failure of a dealer upon demand to pay the fees and penalties determined to be due as provided in Section 4456 hereof is declared to be a violation of Division 3 (commencing with Section 4000) of this code, and Part 5 (commencing with Section 10701), Division 2 of the Revenue and Taxation Code and to constitute loss or damage to the state in the amounts of such fees and penalties determined to be due and not paid.

(d) The claims of the State under subdivision (b) shall be satisfied first and entitled to preference over all claims under subdivision (a).

(e) The claims of any person under subdivision (a) who is not a licensee shall be satisfied first and entitled to preference over all other claims under subdivision (a).

*Amended Ch. 1106, Stats. 1972. Effective March 7, 1973.*

*Change of Established Place of Business*

11712. (a) The department shall not issue a dealer's license to any applicant therefor who has not an established place of business as defined in this code. Should the dealer change the site or location of his established place of business, he or she shall, immediately upon making that change, so notify the department. Should a dealer for any reason whatsoever, cease to be in possession of an established place of business from and on which he or she conducts the business for which he or she is licensed, he or she shall immediately notify the department and, upon demand by the department, shall deliver to the department the dealer's license, dealer's special plate or plates, and all report of sale books in his or her possession.

(b) Should the dealer change to, or add another franchise for the sale of new vehicles, or cancel or, for any cause whatever, otherwise lose a franchise for the sale of new vehicles, he or she shall immediately so notify the department.

(c) Any person licensed under this article who has closed his or her established place of business may be served with process issued pursuant to Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code by registered mail at that place of business or at the mailing address of record if different from the established place of business, unless the person has notified the department in writing of another address where service may be made.

*Amended Ch. 751, Stats. 1988. Effective January 1, 1989.*

*Motorcycle and Light Duty Truck Sales: Required Price Information*

11712.5. It is unlawful and a violation of this code for a dealer issued a license pursuant to this article to sell, offer for sale, or display any new vehicle, as follows:

- (a) A new motorcycle unless there is securely attached thereto a statement as required by Section 24014.
- (b) A new light duty truck with a manufacturer's gross vehicle weight rating of 8,500 pounds or less unless there is affixed to the light duty truck the label required by Section 24013.5.

*Amended Ch. 418, Stats. 1987. Effective January 1, 1988.*

*Unlawful Acts*

11713. No holder of any license issued under this article shall do any of the following:

- (a) Make or disseminate, or cause to be made or disseminated, before the public in this state, in any newspaper or other publication, or any advertising device, or by public outcry or proclamation, or in any other manner or means whatever, any statement which is untrue or misleading and which is known, or which by the exercise of reasonable care should be known, to be untrue or misleading; or to so make or disseminate, or cause to be so disseminated, any statement as part of a plan or scheme with the intent not to sell any vehicle or service so advertised at the price stated therein, or as so advertised.
- (b) (1) (A) Advertise or offer for sale or exchange in any manner, any vehicle not actually for sale at the premises of the dealer or available to the dealer directly from the manufacturer or distributor of the vehicle at the time of the advertisement or offer. However, a dealer who has been issued an autobroker's endorsement to his or her dealer's license may advertise his or her service of arranging or negotiating the purchase of a new motor vehicle from a franchised new motor vehicle dealer and may specify the line-makes and models of those new vehicles. Autobrokering service advertisements may not advertise the price or payment terms of any vehicle and shall disclose that the advertiser is an autobroker or auto buying service, and shall clearly and conspicuously state the following: "All new cars arranged for sale are subject to price and availability from the selling franchised new car dealer."
  - (B) As to printed advertisements, the disclosure statement required by subparagraph (A) shall be printed in not less than 10-point bold type size and shall be textually segregated from the other portions of the printed advertisement.
- (2) Notwithstanding subparagraph (A), classified advertisements for autobrokering services that measure two column inches or less are exempt from the disclosure statement in subparagraph (A) pertaining to price and availability.
- (3) Radio advertisements of a duration of less than 11 seconds that do not reference specific line-makes or models of motor vehicles are exempt from the disclosure statement required in subparagraph (A).
- (c) Fail, within 48 hours, in writing to withdraw any advertisement of a vehicle that has been sold or withdrawn from sale.
- (d) Advertise or represent a vehicle as a new vehicle if the vehicle is a used vehicle.
- (e) Engage in the business for which the licensee is licensed without having in force and effect a bond as required by this article.
- (f) Engage in the business for which the dealer is licensed without at all times maintaining an established place of business as required by this code.
- (g) Include, as an added cost to the selling price of a vehicle, an amount for licensing or transfer of title of the vehicle, which is not due to the state unless, prior to the sale, that amount has been paid by a dealer to the state in order to avoid penalties that would have accrued because of late payment of the fees. However, a dealer may collect from the second purchaser of a vehicle a prorated fee based upon the number of months remaining in the registration year for that vehicle, if the vehicle had been previously sold by the dealer and the sale was subsequently rescinded and all the fees that were paid, as required by this code and Chapter 2 (commencing with Section 10751) of Division 2 of the Revenue and Taxation Code, were returned to the

first purchaser of the vehicle.

- (h) Employ any person as a salesperson who has not been licensed pursuant to Article 2 (commencing with Section 11800), and whose license is not displayed on the premises of the dealer as required by Section 11812, or willfully fail to notify the department by mail within 10 days of the employment or termination of employment of a salesperson.
- (i) Deliver, following the sale, a vehicle for operation on California highways, if the vehicle does not meet all of the equipment requirements of Division 12 (commencing with Section 24000). This subdivision does not apply to the sale of a leased vehicle to the lessee if the lessee is in possession of the vehicle immediately prior to the time of the sale and the vehicle is registered in this state.
- (j) Use, or permit the use of, the special plates assigned to him or her for any purpose other than as permitted by Section 11715.
- (k) Advertise or otherwise represent, or knowingly allow to be advertised or represented on behalf of, or at the place of business of, the license holder that no downpayment is required in connection with the sale of a vehicle when a downpayment is in fact required and the buyer is advised or induced to finance the downpayment by a loan in addition to any other loan financing the remainder of the purchase price of the vehicle.
- (l) Participate in the sale of a vehicle required to be reported to the Department of Motor Vehicles under Section 5900 or 5901 without making the return and payment of the full sales tax due and required by Section 6451 of the Revenue and Taxation Code.
- (m) Permit the use of the dealer's license, supplies, or books by any other person for the purpose of permitting that person to engage in the purchase or sale of vehicles required to be registered under this code, or permit the use of the dealer's license, supplies, or books to operate a branch location to be used by any other person, whether or not the licensee has any financial or equitable interest or investment in the vehicles purchased or sold by, or the business of, or branch location used by, the other person.
- (n) Violate any provision of Article 10 (commencing with Section 28050) of Chapter 5 of Division 12.
- (o) Sell a previously unregistered vehicle without disclosing in writing to the purchaser the date on which any manufacturer's or distributor's warranty commenced.
- (p) Accept a purchase deposit relative to the sale of a vehicle, unless the vehicle is present at the premises of the dealer or available to the dealer directly from the manufacturer or distributor of the vehicle at the time the dealer accepts the deposit. Purchase deposits accepted by an autobroker when brokering a retail sale shall be governed by Sections 11736 and 11737.
- (q) Consign for sale to another dealer a new vehicle.
- (r) Display a vehicle for sale at a location other than an established place of business authorized by the department for that dealer or display a new motor vehicle at the business premises of another dealer registered as an autobroker. This subdivision does not apply to the display of a vehicle pursuant to subdivision (b) of Section 11709 or the demonstration of the qualities of a motor vehicle by way of a test drive.

*Amended Ch. 1253, Stats. 1994. Effective January 1, 1995.*

*Amended Sec. 9.5, Ch. 766, Stats. 1995. Effective January 1, 1996. Supersedes Sec. 5, Ch. 211.*

*Amended Sec. 1, Ch. 517, Stats. 1998. Effective January 1, 1999.*

### ***Additional Unlawful Acts: Dealers***

11713.1. It is a violation of this code for the holder of any dealer's license issued under this article to do any of the following:

- (a) Advertise any specific vehicle for sale without identifying the vehicle by either its vehicle identification number or license number.
- (b) Advertise the total price of a vehicle without including all costs to the purchaser at time of sale, except taxes, vehicle registration fees, ( )<sup>1</sup> ***emission testing fees not exceeding fifty dollars (\$50), actual fees charged for certificates pursuant to Section 44060 of the Health and Safety Code***, finance charges, and any dealer document preparation charge. The dealer document preparation charge shall not exceed forty-five dollars (\$45).

- (c) Exclude from the newspaper display advertisement of a vehicle for sale that there will be added to the advertised total price at the time of sale, charges for sales tax, vehicle registration fees, the fee charged by the state for the issuance of any certificate of compliance or noncompliance pursuant to any statute, finance charges, and any dealer document preparation charge.

For purposes of this subdivision, “newspaper display advertisement” means any advertisement in a newspaper which is two or more newspaper columns in width or one newspaper column in width and more than seven inches in length.

- (d) Represent the dealer document preparation charge or certificate of compliance or noncompliance fee, as a governmental fee.
- (e) Fail to sell a vehicle to any person at the advertised total price, exclusive of taxes, vehicle registration fees, the fee charged by the state for the issuance of any certificate of compliance or noncompliance pursuant to any statute, finance charges, mobilehome escrow fees, the amount of any city, county, or city and county imposed fee or tax for a mobilehome, and any dealer document preparation charge, which charges shall not exceed forty-five dollars (\$45) for the document preparation charge and ( )<sup>2</sup> ***not to exceed fifty dollars (\$50) for emission testing plus the actual fees charged for certificates pursuant to Section 44060 of the Health and Safety Code***, while the vehicle remains unsold, unless the advertisement states the advertised total price is good only for a specified time and the time has elapsed.
- (f) (1) Advertise for sale, sell, or purchase for resale any new vehicle of a line-make for which the dealer does not hold a franchise.  
(2) This subdivision does not apply to any transaction involving any of the following:
  - (A) A mobilehome.
  - (B) A recreational vehicle as defined in Section 18010 of the Health and Safety Code.
  - (C) A commercial coach, as defined in Section 18001.8 of the Health and Safety Code.
  - (D) An off-highway motor vehicle subject to identification as defined in Section 38012.
  - (E) A manufactured home.
  - (F) A new vehicle that will be substantially altered or modified by a converter prior to resale.
  - (G) A commercial vehicle with a gross vehicle weight rating or more than 10,000 pounds.
  - (H) A vehicle purchased for export and exported outside the territorial limits of the United States without being registered with the department.
- (g) Sell a park trailer, as specified in subdivision (b) of Section 18010 of the Health and Safety Code, without disclosing in writing to the purchaser that a park trailer is required to be moved by a transporter or a licensed manufacturer or dealer under a permit issued by the Department of Transportation or a local authority with respect to highways under their respective jurisdictions.
- (h) Advertise free merchandise, gifts, or services provided by a dealer contingent on the purchase of a vehicle. The term “free” includes merchandise or services offered for sale at a price less than the seller’s cost of the merchandise or services.
- (i) Advertise vehicles, and related goods or services, at a specified dealer price, with the intent not to supply reasonably expectable demand, unless the advertisement discloses the number of vehicles in stock at the advertised price. In addition, whether or not there are sufficient vehicles in stock to supply a reasonably expectable demand, when phrases such as “starting at,” “from,” “beginning as low as,” or words of similar import are used in reference to an advertised price, the advertisement shall disclose the number of vehicles available at that advertised price.

For purposes of this subdivision, in any newspaper advertisement for a vehicle that is two model years old or newer, the actual phrase that states the number of vehicles in stock at the advertised price shall be (1) printed in a type size that is at least equal to one-quarter of the type size, and in the same style and color of type, used for the advertised price, however, in no case shall the phrase be printed in less than 8-point type size, and (2) be disclosed immediately above, below, or beside the advertised price without any intervening words, pictures,



marks, or symbols.

The disclosure required by this subdivision is in addition to any other disclosure required by this code or any regulation regarding identifying vehicles advertised for sale.

- (j) Use the term “rebate” or similar words such as “cash back” in advertising the sale of a vehicle unless the rebate is expressed in a specific dollar amount and is in fact a rebate offered by the vehicle manufacturer or distributor directly to the retail purchaser of the vehicle or to the assignee of the retail purchaser.
- (k) Require a person to pay a higher price for a vehicle and related goods or services for receiving advertised credit terms than the cash price the same person would have to pay to purchase the same vehicle and related goods or services. For the purpose of this subdivision, “cash price” has the meaning as defined in subdivision (e) of Section 2981 of the Civil Code.
- (l) Advertise a guaranteed trade-in allowance unless the guarantee is provided by the manufacturer or distributor.
- (m) Misrepresent the authority of a salesperson, representative, or agent to negotiate the final terms of a transaction.
- (n) (1) Use the terms “invoice,” “dealer’s invoice,” “wholesale price,” or similar terms that refer to a dealer’s cost for a vehicle in an advertisement for the sale of a vehicle or advertise that the selling price of a vehicle is above, below, or at either of the following:
  - (A) The manufacturer’s or distributor’s invoice price to a dealer.
  - (B) A dealer’s cost.
- (2) This subdivision does not apply to either of the following: :
  - (A) Any communication occurring during face-to-face negotiations for the purchase of a specific vehicle if the prospective purchaser initiates a discussion of the vehicle’s invoice price or the dealer’s cost for that vehicle.
  - (B) Any communication between a dealer and a prospective commercial purchaser that is not disseminated to the general public. For purposes of this subparagraph, a “commercial purchaser” means a dealer, lessor, lessor-retailer, manufacturer, remanufacturer, distributor, financial institution, governmental entity, or person who purchases 10 or more vehicles during a year.
- (o) Violate any law prohibiting bait and switch advertising, including, but not limited to, the guides against bait advertising set forth in Part 238 (commencing with Section 238) of Title 16 of the Code of Federal Regulations, as those regulations read on January 1, 1988.
- (p) Make any untrue or misleading statement indicating that a vehicle is equipped with all the factory installed optional equipment the manufacturer offers, including, but not limited to, a false statement that a vehicle is “fully factory equipped.”
- (q) Affix on any new vehicle a supplemental price sticker containing a price that represents the dealer’s asking price which exceeds the manufacturer’s suggested retail price unless all of the following occur:
  - (1) The supplemental sticker clearly and conspicuously discloses in the largest print appearing on the sticker, other than the print size used for the dealer’s name, that the supplemental sticker price is the dealer’s asking price, or words of similar import, and that it is not the manufacturer’s suggested retail price.
  - (2) The supplemental sticker clearly and conspicuously discloses the manufacturer’s suggested retail price.
  - (3) The supplemental sticker lists each item which is not included in the manufacturer’s suggested retail price, and discloses the additional price of each item. If the supplemental sticker price is greater than the sum of the manufacturer’s suggested retail price and the price of the items added by the dealer, then the supplemental sticker price shall set forth that difference and describe it as “added mark-up.”
- (r) Advertise any underselling claim, such as “we have the lowest prices” or “we will beat any dealer’s price,” unless the dealer has conducted a recent survey showing that the dealer sells its vehicles at lower prices than any other licensee in its trade area and maintains records to adequately substantiate the claims. The substantiating records shall be made available to the department upon request.

- (s) Advertise any incentive offered by the manufacturer or distributor if the dealer is required to contribute to the cost of the incentive as a condition of participating in the incentive program, unless the dealer discloses in a clear and conspicuous manner that dealer participation may affect consumer cost.

For purposes of this subdivision, “incentive” means anything of value offered to induce people to purchase a vehicle, including, but not limited to, discounts, savings claims, rebates, below-market finance rates, and free merchandise or services.

- (t) Display or offer for sale any used vehicle unless there is affixed to the vehicle the Federal Trade Commission’s Buyer’s Guide as required by Part 455 of Title 16 of the Code of Federal Regulations.
- (u) Fail to disclose in writing to the franchisor of a new motor vehicle dealer the name of the purchaser, date of sale, and the vehicle identification number of each new motor vehicle sold of the line-make of that franchisor, or intentionally submit to that franchisor a false name for the purchaser or false date for the date of sale.
- (v) Enter into a contract for the retail sale of a motor vehicle unless the contract clearly and conspicuously discloses whether the vehicle is being sold as a new vehicle or a used vehicle, as defined in this code.
- (w) Use a simulated check, as defined in subdivision (a) of Section 22433 of the Business and Professions Code, in an advertisement for the sale or lease of a vehicle.
- (x) Fail to disclose, in a clear and conspicuous manner in at least 10-point bold type on the face of any contract for the retail sale of a new motor vehicle that this transaction is, or is not, subject to a fee received by an autobroker from the selling new motor vehicle dealer, and the name of the autobroker, if applicable.

*Amended Ch. 1576, Stats. 1990. Effective January 1, 1991. Supersedes Ch. 1362, 1563.*

*Amended Ch. 1054, Stats. 1991. Effective January 1, 1992. Supersedes Ch. 935.*

*Amended Ch. 1092, Stats. 1992. Effective January 1, 1993. Supersedes Ch. 1091.*

*Amended Ch. 535, Stats. 1993. Effective January 1, 1994.*

*Amended Ch. 1253, Stats. 1994. Effective January 1, 1995.*

*Amended Sec. 2, Ch. 585, Stats. 1995. Effective January 1, 1996. Supersedes Sec. 6, Ch. 211.*

*Amended Sec. 1, Ch. 186, Stats. 1996. Effective January 1, 1997.*

*Amended Sec. 2, Ch. 230, Stats. 1999. Effective January 1, 2000.*

*The 1999 amendment added the italicized material, and at the point(s) indicated, deleted the following:*

*“certificate of compliance or noncompliance fees not exceeding forty-five dollars (\$45) pursuant to any statute,”*

*“forty-five dollars (\$45) for the certificate of compliance or noncompliance pursuant to any statute”*

#### *Additional Unlawful Acts*

11713.2. It shall be unlawful and a violation of this code for any manufacturer, manufacturer branch, distributor, or distributor branch licensed under this code to coerce or attempt to coerce any dealer in this state:

- (a) To order or accept delivery of any motor vehicle, part or accessory thereof, appliance, equipment or any other commodity not required by law which shall not have been voluntarily ordered by the dealer.
- (b) To order or accept delivery of any motor vehicle with special features, appliances, accessories or equipment not included in the list price of such motor vehicles as publicly advertised by the manufacturer or distributor.
- (c) To order for any person any parts, accessories, equipment, machinery, tools, appliances, or any commodity whatsoever.
- (d) To participate in an advertising campaign or contest, any promotional campaign, promotional materials, training materials, showroom or other display decorations or materials at the expense of the dealer.
- (e) To enter into any agreement with the manufacturer, manufacturer branch, distributor, or distributor branch, or to do any other act prejudicial to the dealer by threatening to cancel a franchise or any contractual agreement existing between the dealer and manufacturer, manufacturer branch, distributor, or distributor branch. Notice in good faith to any dealer of the dealer’s violation of any terms or provisions of such franchise or contractual agreement shall not constitute a violation of this article.

*Amended and renumbered Ch. 943, Stats. 1979. Effective January 1, 1980. Supersedes Ch. 373.*

#### *Additional Unlawful Acts; Vehicle Manufacturers and Distributors*

11713.3. It is unlawful and a violation of this code for any manufacturer, manufacturer branch, distributor, or distributor branch licensed under this code to do any of the following:



- (a) To refuse or fail to deliver in reasonable quantities and within a reasonable time after receipt of an order from a dealer having a franchise for the retail sale of any new vehicle sold or distributed by the manufacturer or distributor, any new vehicle or parts or accessories to new vehicles as are covered by the franchise, if the vehicle, parts, or accessories are publicly advertised as being available for delivery or actually being delivered. This subdivision is not violated, however, if the failure is caused by acts or causes beyond the control of the manufacturer, manufacturer branch, distributor, or distributor branch.
- (b) To prevent or require, or attempt to prevent or require, by contract or otherwise, any change in the capital structure of a dealership or the means by or through which the dealer finances the operation of the dealership, provided that the dealer at all times meets any reasonable capital standards agreed to by the dealer and the manufacturer or distributor, and also provided that no change in capital structure shall cause a change in the principal management or have the effect of a sale of the franchise without the consent of the manufacturer or distributor.
- (c) To prevent or require, or attempt to prevent or require, a dealer to change the executive management of a dealership, other than the principal dealership operator or operators if the franchise was granted the dealer in reliance upon the personal qualifications of such person or persons.
- (d) (1) Except as provided in subdivision (t), to prevent or require, or attempt to prevent or require, by contract or otherwise, any dealer, or any officer, partner, or stockholder of any dealership, the sale or transfer of any part of the interest of any of them to any other person or persons. No dealer, officer, partner, or stockholder shall, however, have the right to sell, transfer, or assign the franchise, or any right thereunder, without the consent of the manufacturer or distributor except that the consent shall not be unreasonably withheld.
- (2) (A) For the transferring franchisee to fail, prior to the sale, transfer, or assignment of a franchisee or the sale, assignment, or transfer of all or substantially all of the assets of the franchised business or a controlling interest in the franchised business to another person, to notify the manufacturer or distributor of the franchisee's decision to sell, transfer, or assign the franchise. The notice shall be in writing and shall include all of the following:
  - (i) The proposed transferee's name and address.
  - (ii) A copy of all of the agreements relating to the sale, assignment, or transfer of the franchised business or its assets.
  - (iii) The proposed transferee's application for approval to become the successor franchisee. The application shall include forms and related information generally utilized by the manufacturer or distributor in reviewing prospective franchisees, if those forms are readily made available to existing franchisees. As soon as practicable after receipt of the proposed transferee's application, the manufacturer or distributor shall notify the franchisee and the proposed transferee of any information needed to make the application complete.
- (B) For the manufacturer or distributor, to fail on or before 60 days after the receipt of all of the information required pursuant to subparagraph (A), or as extended by a written agreement between the manufacturer or distributor and the franchisee, to notify the franchisee of the approval or the disapproval of the sale, transfer, or assignment of the franchise. The notice shall be in writing and shall be personally served or sent by certified mail, return receipt requested, or by guaranteed overnight delivery service that provides verification of delivery and shall be directed to the franchisee. Any proposed sale, assignment, or transfer shall be deemed approved, unless disapproved by the franchisor in the manner provided by this subdivision. If the proposed sale, assignment, or transfer is disapproved, the franchisor shall include in the notice of disapproval a statement setting forth the reasons for the disapproval.
- (3) In any action in which the manufacturer's or distributor's withholding of consent under this subdivision or subdivision (e) is an issue, whether the withholding of consent was unreasonable is a question of fact requiring consideration of all the existing circumstances.
- (e) To prevent, or attempt to prevent, a dealer from receiving fair and reasonable compensation for the value of the franchised business. There shall be no transfer or assignment of the dealer's franchise without the

consent of the manufacturer or distributor, which consent shall not be unreasonably withheld or conditioned upon the release, assignment, novation, waiver, estoppel, or modification of any claim or defense by the dealer.

- (f) To obtain money, goods, service, or any other benefit from any other person with whom the dealer does business, on account of, or in relation to, the transaction between the dealer and that other person, other than for compensation for services rendered, unless the benefit is promptly accounted for, and transmitted to, the dealer.
- (g) To require a dealer to prospectively assent to a release, assignment, novation, waiver, or estoppel which would relieve any person from liability to be imposed by this article or to require any controversy between a dealer and a manufacturer, distributor, or representative, to be referred to any person other than the board, if the referral would be binding on the dealer. This subdivision does not, however, prohibit arbitration before an independent arbitrator.
- (h) To increase prices of motor vehicles which the dealer had ordered for private retail consumers prior to the dealer's receipt of the written official price increase notification. A sales contract signed by a private retail consumer is evidence of each such order. In the event of manufacturer price reductions, the amount of the reduction received by a dealer shall be passed on to the private retail consumer by the dealer if the retail price was negotiated on the basis of the previous higher price to the dealer. Price reductions apply to all vehicles in the dealer's inventory which were subject to the price reduction. Price differences applicable to new model or series motor vehicles at the time of the introduction of new models or series shall not be considered a price increase or price decrease. Price changes caused by either (1) the addition to a motor vehicle of required or optional equipment pursuant to state or federal law, or (2) revaluation of the United States dollar in the case of foreign-make vehicles, are not subject to this subdivision.
- (i) To fail to pay to a dealer, within a reasonable time following receipt of a valid claim by a dealer thereof, any payment agreed to be made by the manufacturer or distributor to the dealer by reason of the fact that a new vehicle of a prior year model is in the dealer's inventory at the time of introduction of new model vehicles.
- (j) To deny the widow or heirs designated by a deceased owner of a dealership, the opportunity to participate in the ownership of the dealership or successor dealership under a valid franchise for a reasonable time after the death of the owner.
- (k) To offer any refunds or other types of inducements to any person for the purchase of new motor vehicles of a certain line-make to be sold to the state or any political subdivision thereof without making the same offer to all other dealers in the same line-make within the relevant market area.
- (l) To modify, replace, enter into, relocate, terminate or refuse to renew a franchise in violation of Article 4 (commencing with Section 3060) of Chapter 6 of Division 2.
- (m) To employ a person as a representative who has not been licensed pursuant to Article 3 (commencing with Section 11900) of Chapter 4 of Division 5.
- (n) To deny any dealer the right of free association with any other dealer for any lawful purpose.
- (o) To compete with a dealer in the same line-make operating under an agreement or franchise from a manufacturer or distributor in the relevant market area. A manufacturer or distributor shall not, however, be deemed to be competing when operating a dealership either temporarily for a reasonable period, or in a bona fide retail operation which is for sale to any qualified independent person at a fair and reasonable price, or in a bona fide relationship in which an independent person has made a significant investment subject to loss in the dealership and can reasonably expect to acquire full ownership of the dealership on reasonable terms and conditions. A distributor shall not be deemed to be competing when a wholly owned subsidiary corporation of the distributor sells motor vehicles at retail, if, for at least three years prior to January 1, 1973, the subsidiary corporation has been a wholly owned subsidiary of the distributor and engaged in the sale of vehicles at retail.
- (p) To unfairly discriminate among its franchisees with respect to warranty reimbursement or authority granted its franchisees to make warranty adjustments with retail customers.
- (q) To sell vehicles to persons not licensed under this chapter for resale.

- (r) To fail to affix an identification number to any park trailer, as described in subdivision (b) of Section 18010 of the Health and Safety Code, which is manufactured on or after January 1, 1987, and which does not clearly identify the unit as a park trailer to the department. The configuration of the identification number shall be approved by the department.
- (s) To dishonor a warranty, rebate, or other incentive offered to the public or a dealer in connection with the retail sale of a new motor vehicle, based solely upon the fact that an autobroker arranged or negotiated the sale. This subdivision shall not prohibit the disallowance of that rebate or incentive if the purchaser or dealer is ineligible to receive the rebate or incentive pursuant to any other term or condition of a rebate or incentive program.
- (t) To exercise a right of first refusal or any other right requiring a franchisee or any owner thereof to sell, transfer, or assign to the franchisor, or to any nominee of the franchisor, all or any material part of the franchised business or of the assets thereof unless all of the following requirements are met:
  - (1) The franchise authorizes the franchisor to exercise a right of first refusal to acquire the franchised business or assets thereof in the event of a proposed sale, transfer or assignment.
  - (2) The franchisor gives written notice of its exercise of the right of first refusal no later than 45 days after the franchisor receives all of the information required pursuant to subparagraph (A) of paragraph (2) of subdivision (d).
  - (3) The sale, transfer, or assignment being proposed relates to not less than all or substantially all of the assets of the franchised business or to a controlling interest in the franchised business.
  - (4) The proposed transferee is neither a family member of an owner of the franchised business, nor a managerial employee of the franchisee owning 15 percent or more of the franchised business, nor a corporation, partnership, or other legal entity owned by the existing owners of the franchised business. For purposes of this paragraph, a "family member" means the spouse of an owner of the franchised business, the child, grandchild, brother, sister, or parent of an owner, or a spouse of one of those family members. Nothing contained in this paragraph limits the rights of the franchisor to disapprove a proposed transferee as provided in subdivision (d).
  - (5) Upon the franchisor's exercise of the right of first refusal, the consideration paid by the franchisor to the franchisee and owners of the franchised business shall equal or exceed all consideration that each of them were to have received under the terms of, or in connection with, the proposed sale, assignment, or transfer, and the franchisor shall comply with all the terms and conditions of the agreement or agreements to sell, transfer, or assign the franchised business.
  - (6) The franchisor shall reimburse the proposed transferee for any expenses paid or incurred by the proposed transferee in evaluating, investigating, and negotiating the proposed transfer to the extent those expenses do not exceed the usual, customary, and reasonable fees charged for similar work done in the area in which the franchised business is located. These expenses include, but are not limited to, legal and accounting expenses, and expenses incurred for title reports and environmental or other investigations of any real property on which the franchisee's operations are conducted. The proposed transferee shall provide the franchisor a written itemization of those expenses, and a copy of all nonprivileged reports and studies for which expenses were incurred, if any, within 30 days of the proposed transferee's receipt of a written request from the franchisor for that accounting. The franchisor shall make payment within 30 days of exercising the right of first refusal.
- (u) To unfairly discriminate in favor of any dealership owned or controlled, in whole or part, by a manufacturer or distributor or an entity that controls or is controlled by the manufacturer or distributor. Nothing in this subdivision shall be interpreted to prohibit a franchisor from granting a franchise to prospective franchisees or assisting those franchisees during the course of the franchise relationship as part of a program or programs to make franchises available to persons lacking capital, training, business experience, or other qualifications ordinarily required of prospective franchisees.

*Amended Ch. 272, Stats. 1993. Effective August 2, 1993.*

*Amended Ch. 1253, Stats. 1994. Effective January 1, 1995.*

*Amended Sec. 7, Ch. 662, Stats. 1998. Effective January 1, 1999.*

### *Refund of Excess Fees by Dealer*

11713.4. If a purchaser of a vehicle pays to the dealer an amount for the licensing or transfer of title of the vehicle, which amount is in excess of the actual fees due for such licensing or transfer, or which amount is in excess of the amount which has been paid, prior to the sale, by the dealer to the state in order to avoid penalties that would have accrued because of late payment of such fees, the dealer shall return such excess amount to the purchaser, whether or not such purchaser requests the return of the excess amount.

*Amended and renumbered Ch. 943, Stats. 1979. Effective January 1, 1980.*

### *Unlawful Representation of Vehicle Year Model*

11713.5. (a) It is unlawful and a violation of this code for the holder of any license issued under this article to display for sale, offer for sale, or sell, a motor vehicle, representing the motor vehicle to be of a year model different from the year model designated at the time of manufacture or first assembly as a completed vehicle.

(b) It is unlawful and a violation of this code for the holder of any license issued under this article to directly or indirectly authorize or advise another holder of a license issued under this article to change the year model of a motor vehicle in the inventory of the other holder.

(c) It is unlawful and a violation of this code for the holder of any license issued under this article to display for sale, offer for sale, or sell, a housecar which has been manufactured in two or more stages, unless the licensee informs the buyer that the housecar has been so manufactured and the licensee provides the buyer with a form, approved by the department, which sets forth the date of chassis and engine manufacture and the date and model year of the other stages of the vehicle. The licensee shall retain a copy of the form, which shall be signed by the purchaser prior to entering into any sales contract, indicating that the purchaser has received a copy of the form.

(d) This section does not apply to the displaying or offering for sale, or selling, of any new motortruck or truck tractor weighing over 10,000 pounds.

(e) This section does not apply to a vehicle which has been remanufactured by a licensed remanufacturer. The year model of a remanufactured vehicle will be the year the vehicle was remanufactured.

*Amended Ch. 1286, Stats. 1983. Effective January 1, 1984.*

### *Additional Unlawful Acts: Dealers: Tire Chains*

11713.6. (a) It is unlawful and a violation of this code for the holder of any dealer's license issued under this article to fail to disclose in writing to the buyer or lessee of a new motor vehicle, that the vehicle, as equipped, may not be operated on a highway signed for the requirement of tire chains if the owner's manual or other material provided by the manufacturer states that the vehicle, as equipped, may not be operated with tire chains.

(b) The disclosure required under subdivision (a) shall meet both of the following requirements:

(1) The disclosure shall be printed in not less than 14-point boldface type on a single sheet of paper that contains no information other than the disclosure.

(2) The disclosure shall include the following language in capital letters: "AS EQUIPPED, THIS VEHICLE MAY NOT BE OPERATED WITH TIRE CHAINS BUT MAY ACCOMMODATE SOME OTHER TYPE OF TIRE TRACTION DEVICE. SEE THE OWNER'S MANUAL FOR DETAILS."

(c) Prior to the sale or lease, the dealer shall present the disclosure statement for the buyer's or lessee's signature and then shall provide the buyer or lessee with a copy of the signed disclosure.

*Added Ch. 6, Stats. 1991. Effective January 1, 1991.*

*Amended Sec. 2, Ch. 452, Stats. 1995. Effective January 1, 1996.*

### *Disclosure: Remanufactured Vehicle*

11713.7. Disclosure to a buyer that a vehicle has been remanufactured is required. Disclosure shall be accomplished by all of the following:

- (a) Oral notification to the buyer.
- (b) The statement “THIS VEHICLE HAS BEEN REMANUFACTURED AND CONTAINS USED OR RECONDITIONED PARTS” shall appear in a type size at least the same as the bulk of the text on the purchase order or conditional sales contract signed by the buyer.
- (c) The statement that the vehicle is remanufactured and contains used or reconditioned parts shall appear in any advertisement pertaining to remanufactured vehicles.
- (d) Remanufactured vehicles displayed for retail purposes shall be clearly designated as remanufactured. The disclosure statement required in subdivision (b) shall appear on the vehicle or at the location where the vehicles are displayed.

*Added Ch. 1286, Stats. 1983. Effective January 1, 1984.*

#### Unlawful Acts: Remanufacturer

11713.8. It is unlawful and a violation of this code for a remanufacturer licensed under this code to fail to do any of the following:

- (a) Report to the department an existing vehicle identification number when a used frame is utilized.
- (b) Die stamp the vehicle identification number to the frame of the vehicle when a new vehicle identification number is assigned.
- (c) Disclose that a vehicle is remanufactured and contains used or reconditioned parts as required by Section 11713.7.
- (d) Remove the trade name of the original manufacturer from the vehicle, unless the remanufacturer and the original manufacturer are same.
- (e) Maintain for three years bills of sale or invoices for used parts utilized in a remanufactured vehicle.
- (f) Maintain for three years proof that the vehicle was reported dismantled, as required by Section 5500 or 11520, when a used frame is utilized in a remanufactured vehicle.
- (g) Disclose, on the vehicle identification number plate or label, that the vehicle is remanufactured and includes used parts.
- (h) Disclose to the dealer on a document signed by the dealer that the vehicle is remanufactured and contains used parts.

*Added Ch. 1286, Stats. 1983. Effective January 1, 1984.*

#### *Disclosure: Engine Manufacturer*

11713.9. (a) It is unlawful and a violation of this code for the holder of a dealer’s license to knowingly display for sale or offer for sale any new motor vehicle specified in subdivision (b) with an engine manufactured by a manufacturer that is not the same as the vehicle manufacturer, as defined in Section 9980, unless the vehicle is prominently labeled as specified in Section 9981.

- (b) This section applies only to new passenger vehicles and to new motortrucks with an unladen weight under 6,000 pounds, except housecars.

*Added Ch. 1264, Stats. 1984. Effective January 1, 1985.*

#### *Low-Speed Vehicle Dealer Disclosure*

11713.10. It is unlawful and a violation of this code to sell a low-speed vehicle, as defined in Section 385.5, without disclosing to the buyer the vehicle’s maximum speed and the potential risks of driving a low-speed vehicle.

*Added Sec. 3, Ch. 140, Stats. 1999. Effective January 1, 2000.*



*Additional Unlawful Acts: Auctions: Dealer Advertising*

11713.11 No holder of a dealer's license shall do any of the following when conducting an auction of vehicles to the public:

- (a) ( )<sup>1</sup> **Advertise** that a vehicle will be auctioned to the public unless all of the following information is clearly and conspicuously disclosed in the advertisement:
- (1) The date or the day of the week of the public auction, or if subdivision (b) applies to the auction, the date of the public auction.
  - (2) The location of the public auction.
  - (3) Whether a fee will be charged to attend the auction **and the amount of that fee**.
  - (4) The name and dealer number of the auctioning dealer.
  - (5) *Whether a buyer's fee will be charged to a purchaser, in addition to the accepted auction bid price, and, if the fee is a set amount, the dollar amount of that fee. If the buyer's fee is not a set amount, the advertisement shall state the formula or percentage used to calculate the fee.*
- (b) If vehicles seized by a federal, state, or local public agency or authority are being advertised, ( )<sup>2</sup> advertise that a vehicle will be auctioned to the public unless, in addition to the information required by subdivision (a), the following information is clearly and conspicuously disclosed in the advertisement:
- (1) A good faith estimate of the number of vehicles to be auctioned at that date.
  - (2) A good faith estimate of the number of vehicles seized by a federal, state, or local public agency or authority to be auctioned at that date.
- (c) ( )<sup>3</sup> **Fail**, on the day of auction, to identify each vehicle seized by a federal, state, or local public agency or authority, either in a printed catalog or orally, before bidding begins on the vehicle.
- (d) **Include in the total price of an auctioned vehicle any costs to the purchaser at the completion of the sale, except the accepted auction bid price, taxes, vehicle registration fees, any charge for emission testing, not to exceed fifty dollars (\$50), plus the actual fees charged to a consumer for a certificate pursuant to Section 44060 of the Health and Safety Code, any dealer document preparation charge not exceeding forty-five dollars (\$45), and any buyer's fee.**
- (e) **Charge a buyer's fee, unless the dealer conducting the auction delivers to any person permitted to submit bids, and at a time prior to accepting any bids from that person, a disclosure statement required by this subdivision and signed by that person. The disclosure statement, if the buyer's fee is a set amount, shall disclose the amount of the fee, or if the buyer's fee is not a set amount, disclose the formula or percentage used to calculate the fee. The disclosure statement shall be on a separate 8 1/2 x 11 inch sheet of paper. Except for the information set forth in this subdivision, the disclosure statement shall not contain any other text, except as necessary to identify the dealer conducting the auction sale and to disclose the amount, percentage, or formula used to calculate the buyer's fee, and to provide for the date and the person's acknowledgment of receipt. The heading shall be printed in no smaller than 24-point bold type and the text of the statement shall be printed in no smaller than 12-point type and shall read substantially as follows:**

**BUYER'S FEE REQUIRED**

***A buyer's fee is an amount charged by the auctioning dealer for conducting the auction sale. If your bid price is accepted as the winning bid on any vehicle, you will be charged a buyer's fee in addition to the accepted bid price.***

***The buyer's fee that will be added to your accepted bid price is \$ \_\_\_\_\_.***

**OR**

***The buyer's fee that will be added to your accepted bid price will be calculated as follows (insert percentage or other formula for calculating the buyer's fee):***

*The buyer's fee is part of the purchase price and is subject to sales tax.*

**Date:** \_\_\_\_\_ **Signature of Bidder** \_\_\_\_\_

***(f) Fail to comply with or violate this chapter, Title 2.95 (commencing with Section 1812.600) of Part 4 of Division 3 of the Civil Code, Section 2328 of the Commercial Code, or Section 535 of the Penal Code, or any law administered by the State Board of Equalization, relating to the auctioneering business, including, but not limited to, sales and the transfer of title of goods.***

***(g) For purposes of this section, a "buyer's fee" is any amount that is in addition to the accepted auction bid price, taxes, vehicle registration fees, certificate of compliance or noncompliance fee, or any dealer document preparation charge, which is charged to a purchaser by an auctioning dealer.***

*Added Sec. 3, Ch. 585, Stats. 1995. Effective January 1, 1996.*

*Amended Sec. 2, Ch. 672, Stats. 1999. Effective January 1, 2000.*

*The 1999 amendment added the italicized material, and at the point(s) indicated, deleted the following:*

*"When advertising one or more specific auction events to the public, it is unlawful for a dealer licensed under this article to advertise "*

*"it is unlawful for a dealer licensed under this article to "*

*"It is unlawful for the auctioning dealer to fail"*

#### *Lemon Law Buyback: Decal Location*

11713.12. (a) The decal required by subdivision (c) of Section 1793.23 of the Civil Code to be affixed by a manufacturer to a motor vehicle, shall be affixed to the left front doorframe of the vehicle, or, if the vehicle does not have a left front doorframe, it shall be affixed in a location designated by the department. The decal shall specify that title to the motor vehicle has been inscribed with the notation "Lemon Law Buyback" and shall be affixed to the vehicle in a manner prescribed by the department.

(b) No person shall knowingly remove or alter any decal affixed to a vehicle pursuant to subdivision (a), whether or not licensed under this code.

*Added Sec. 6, Ch. 503, Stats. 1995. Effective January 1, 1996.*

#### *Dealer Sale: Public Auction: Purchaser's Rights and Remedies*

11713.14 (a) Notwithstanding any other provision of law, a person who purchases a vehicle that is sold through a dealer at an auction of vehicles open to the general public shall have the same rights and remedies against the dealer who conducts the auction sale as if that dealer were the owner and seller of the auctioned vehicle. The purchaser's rights and remedies are in addition to any right or remedy he or she may have against an owner of a vehicle sold at a public auto auction.

(b) If any claim or action is filed against a dealer pursuant to subdivision (a) and the vehicle that is the subject of the claim or action was owned by a person other than the dealer at the time of sale by auction, the owner of the vehicle that consigned it to the dealer shall indemnify the dealer for any liability resulting from misrepresentations or other misconduct by the consignor.

(c) A purchaser's rights and remedies under this section may not be waived or modified by an agreement or by a recharacterization of the sales transaction.

*Added Sec. 3, Ch. 672, Stats. 1999. Effective January 1, 2000.*

#### *Recreational Vehicle Show: Temporary Branch License Requirements*

11713.15. (a) (1) Prior to being issued a temporary branch license for selling new recreational vehicles, as defined in Section 18010 of the Health and Safety Code, at a show, a dealer shall submit to the department a manufacturer's written authorization for the sale specifying the dates of the show, the location of the show, and the makes of those new recreational vehicles being offered for sale.

(2) If nine or fewer dealers are participating in the show, a temporary branch license may only be issued to a dealer under this subdivision if the location of the show is 50 miles or less from that dealer's established place of business or permanent branch location.



Each dealer described in this paragraph shall certify in his or her application for a temporary branch license that the show location is 50 miles or less from his or her established place of business or permanent branch location.

- (3) A temporary branch license may be issued to a dealer for purposes of participating in a show if all of the following conditions exist:
- (A) The location of the show is 50 miles or more from the dealer's place of business or that dealer's branch locations, or both.
  - (B) Ten or more dealers apply for temporary branch licenses for purposes of participating in that show.
  - (C) Not less than 10 days prior to the conduct of the show, the department receives at least 10 applications for temporary branch licenses together at one of the department's field offices.
- (b) (1) Any advertising and promotional materials designed to attract the public to attend a show of recreational vehicles where there are nine or fewer dealers participating shall include the business name of each participating dealer and that dealer's established place of business in a type size that is equivalent to the second largest type used in the advertisement or promotional materials. This information shall be placed at the top of any advertisement or promotional materials.
- (2) If the recreational vehicles being offered for sale are used, the word "used" shall immediately precede the identification of the make of the vehicle or be immediately adjacent to the depiction of any used vehicles.
- (3) In addition, the promoters of the show shall cause a sign to be conspicuously displayed at the major, public entrance leading directly to the show, printed in 50-point type, containing the information required in paragraph (1).
- (c) A recreational vehicle dealer participating in a show for which a temporary branch license is required shall provide each buyer, prior to the sale of any vehicle at the show, a written statement disclosing the identity and the established business location of the dealer that has agreed to render service or warranty work with respect to the vehicle being purchased by the buyer, and if there is no agreement with any dealer to render the service or warranty, to state that fact.
- (d) Paragraphs (2) and (3) of subdivision (a) and subdivision (b) do not apply to a dealer participating in an annual show sponsored by a national trade association of recreational vehicle manufacturers, the show is located in a county with a population of 6,000,000 or more persons, and at least 25 manufacturers are participating in the show, and, if the dealer is otherwise eligible to participate in the show, the department shall issue a temporary branch license if all the following occur:
- (1) A national trade association of recreational vehicle manufacturers submits a letter to the department that certifies its status as a national trade association of recreational vehicle manufacturers and specifies the dates and location of the show.
  - (2) Upon receipt of the letter from a national trade association described in paragraph (1) notifying the department of the dates and location of the show, the department provides written acknowledgement to the national trade association submitting the letter.
  - (3) Each dealer participating in the show attaches a copy of the department letter described in paragraph (2) to the application for a temporary branch license submitted to the department.

*Added Sec. 1, Ch. 923, Stats. 1995. Effective January 1, 1996.*

*Amended Sec. 1, Ch. 339, Stats. 1997. Effective August 21, 1997.*

#### *Issuance of License, Special Plates, and Forms: Prohibited Sales*

11714. (a) The department, upon granting a license, shall issue to the applicant a license containing the applicant's name and address and the general distinguishing number assigned to the applicant.

(b) A dealer shall not sell any vehicle at retail at a location that is not posted pursuant to Section 11709.

- (c) A dealer who is authorized by the department to sell motor vehicles only at wholesale shall not sell any vehicle at retail and shall report every sale to the department on the wholesale report of sale form prescribed by the department.
- (d) When the department has issued a license pursuant to subdivision (a), the licensee may apply for and the department shall issue special plates which shall have displayed thereon the general distinguishing number assigned to the applicant. Each plate so issued shall also contain a number or symbol identifying the plate from every other plate bearing a like general distinguishing number.
- (e) The department shall also furnish books and forms as it may determine necessary. Such books and forms are and shall remain the property of the department and may be taken up at any time for inspection.

*Amended Ch. 444, Stats. 1987. Effective January 1, 1988.*

#### *Operation With Special Plates: Exceptions*

11715. (a) A manufacturer, remanufacturer, distributor, or dealer owning or lawfully possessing any vehicle of a type otherwise required to be registered under this code may operate or move the vehicle upon the highways without registering each such vehicle upon condition that any such vehicle display thereon special plates issued to the owner as provided in this chapter, in addition to other license plates or permits already assigned and attached to the vehicle in the manner prescribed in Sections 5200 to 5203, inclusive. The vehicles may also be moved or operated for the purpose of towing or transporting by any lawful method other vehicles.

(b) A transporter may operate or move any owned or lawfully possessed vehicle of like type by any lawful method upon the highways solely for the purpose of delivery, upon condition that there be displayed upon each vehicle in contact with the highway special license plates issued to the transporter as provided in this chapter, in addition to any license plates or permits already assigned and attached to the vehicle in the manner prescribed in Sections 5200 to 5203, inclusive. The vehicles may be used for the purpose of towing or transporting by any lawful method other vehicles when the towing or transporting vehicle is being delivered for sale or to the owner thereof.

(c) This section does not apply to any manufacturer, remanufacturer, transporter, distributor, or dealer operating or moving a vehicle as provided in Section 11716.

(d) This section does not apply to work or service vehicles owned by a manufacturer, remanufacturer, transporter, distributor, or dealer. This section does not apply to vehicles owned and leased by dealers, except those vehicles rented or leased to vehicle salesmen in the course of their employment for purposes of display or demonstration, nor to any unregistered vehicles used to transport more than one load of other vehicles for the purpose of sale.

(e) This section does not apply to vehicles currently registered in this state which are owned and operated by a licensed dealer when the notice of transfer has been forwarded to the department by the former owner of record pursuant to Section 5900 and when a copy of the notice is displayed as follows:

- (1) For a motorcycle or motor-driven cycle, the notice is displayed in a conspicuous manner upon the vehicle.
- (2) For a vehicle other than a motorcycle or motor-driven cycle, the notice is displayed in the lower right-hand corner of the windshield of the vehicle, as specified in paragraph (3) of subdivision (b) of Section 26708.

(f) Every owner, upon receipt of a registration card issued for special plates, shall maintain the same or a facsimile copy thereof with the vehicle bearing the special plates.

*Amended Ch. 1286, Stats. 1983. Effective January 1, 1984.*

#### *Operation Without Registration: Permit*

11716. A manufacturer, remanufacturer, transporter, distributor, or dealer, in the course of business, may operate or move any vehicle of a type otherwise required to be registered under this code without registering the vehicle, and without license or special plates attached thereto, from a vessel, railroad depot, or warehouse over the

highways to a warehouse or salesroom upon first having obtained a written permit from the department authorizing that operation.

*Amended Ch. 1563, Stats. 1990. Effective January 1, 1991.*

#### *Expiration and Renewal of Special Plates and License*

11717. (a) Every occupational license and special plate issued under this article shall be valid for a period of one year from midnight of the last day of the month of issuance. Except as provided in subdivision (c), renewal of the occupational license and special plates for the ensuing year may be obtained by the person to whom the occupational license and special plates were issued upon application to the department and payment of the fee provided in this code.

(b) Every application for the renewal of an occupational license and special plates which expire pursuant to this section shall be made by the person to whom issued not more than 90 days prior to the expiration date, and shall be made by presenting the completed application form provided by the department and by payment of the full annual renewal fee for the occupational license and special plates.

(c) If the application for renewal of the occupational license and special plates is not made by midnight of the expiration date, the application may be made within 30 days following expiration of the license by paying the annual renewal fee and a penalty fee equal to the amount of the original application fee for each occupational license held. A penalty as specified in Sections 9553 and 9554 shall also be added to each special plate renewed during the 30-day period following expiration of the special plates.

(d) In no event may the licensee renew the occupational license or special plates after the expiration of the 30-day period authorized in subdivision (c).

*Amended Ch. 499, Stats. 1984. Effective January 1, 1985.*

#### *Issuance of Probationary License*

11718. Except where the provisions of this code require the refusal to issue a license, the department may issue a probationary license subject to conditions to be observed by the licensee in the exercise of the privilege granted. The conditions to be attached to the exercise of the privilege shall not appear on the face of the license but shall be such as may, in the judgment of the department, be in the public interest and suitable to the qualifications of the applicant as disclosed by the application and investigation by the department of the information contained therein.

*Amended Ch. 1214, Stats. 1971. Operative May 3, 1972.*

#### *Temporary Permit*

11719. Pending the satisfaction of the department that the applicant has met the requirements under this article, it may issue a temporary permit to any person applying for a manufacturer's, manufacturer's branch, remanufacturer's, remanufacturer's branch, distributor's, distributor's branch, transporter's, or dealer's license and special plates. The temporary permit shall permit the operation by the manufacturer, manufacturer branch, remanufacturer, remanufacturer branch, distributor, distributor branch, transporter, or dealer for a period not to exceed 120 days while the department is completing its investigation and determination of all facts relative to the qualifications of the applicant to the license and special plates. The department may cancel the temporary permit when it has determined, or has reasonable cause to believe, that the application is incorrect or incomplete or the temporary permit was issued in error. The temporary permit is invalid when canceled or when the applicant's license has been issued or refused.

*Amended Ch. 1286, Stats. 1983. Effective January 1, 1984.*

#### *Certificate of Convenience*

11720. The department may issue a certificate of convenience to the executor, executrix, administrator or administratrix of the estate of a deceased holder of validly outstanding special plates and license issued under this article, or if no executor, executrix, administrator or administratrix has been appointed, and until a certified copy of an order making such appointment is filed with the department, to the surviving spouse or other heir

otherwise entitled to conduct the business of the deceased, permitting such person to exercise the privileges granted by such special plates and license for a period of one year from and after the date of death and necessary one-year renewals thereafter, pending, but not later than, disposal of the business and qualification of the vendee of the business or such surviving spouse, heir or other persons for such special plates and license under the provisions of this article. The department may restrict or condition the license and attach to the exercise of the privileges thereunder such terms and conditions as in its judgment the protection of the public requires.

*Amended Ch. 1171, Stats. 1976. Effective January 1, 1977.*

#### *Automatic Cancellation*

11721. The special plates and licenses provided for in this article shall be automatically canceled upon the happening of any of the following:

- (a) The abandonment of the established place of business of the dealer or the change thereof without notice to the department as provided in Section 11712.
- (b) The failure of the licensee to maintain an adequate bond or to procure and file another bond as provided in Section 11710 prior to the effective date of the termination by the surety of any existing bond.
- (c) The voluntary or involuntary surrender for any cause by the licensee of the special plates and license, except that the surrender of the special plates and license, the cessation of business by the licensee, or the suspension or revocation of the corporate status of the licensee, does not preclude the filing of an accusation for revocation or suspension of the surrendered license as provided in Section 11705, does not affect the department's decision to suspend or revoke the license. The department's determination to suspend or revoke the license may be considered in issuing or refusing to issue any subsequent license authorized by this division to that licensee or to a business representative of that prior licensee.
- (d) Notification to the department that the person designated as licensee has changed, except that the special plates issued to the original licensee may be transferred and the newly designated licensee as transferee shall succeed to the privileges evidenced by the plates until their expiration.
- (e) The suspension or revocation of the corporate status of the licensee.
- (f) The suspension or revocation of the seller's permit of the licensee by the State Board of Equalization.

*Amended Ch. 1563, Stats. 1990. Effective January 1, 1991.*

#### *Financing Agency*

11722. The bond provided for in Section 11710 shall not be conditioned to protect the monetary interest of a financing agency which has loaned money to a licensee or assignee thereof; provided, however, that as to any conditional sales contract as defined in Section 2981 of the Civil Code, acquired by way of purchase or pledge, a financing agency shall be entitled to protection under said bond if such agency is defrauded by a licensee.

*Added Ch. 35, Stats. 1960. Effective June 25, 1960.*

#### *License Fees: Exception*

11723. The board may require that fees shall be paid to the department for the issuance or renewal of a license to do business as a new motor vehicle dealer, dealer branch, manufacturer, manufacturer branch, distributor, distributor branch, or representative. The fees shall be to reimburse the department for costs incurred in licensing those dealers, manufacturers, distributors, branches, and representatives and for related administrative costs incurred on behalf of the board. The board may also require that an additional fee be paid to the department when the licensee has failed to pay the fee authorized by Section 3016 prior to the expiration of its occupational license and special plates and the licensee utilizes the 30-day late renewal period authorized by subdivision (c) of Section 11717.

This section shall not apply to dealers, manufacturers, distributors, or representatives of vehicles not subject to registration under this code, except dealers, manufacturers, manufacturer branches, distributors, distributor branches, or representatives of off-highway motorcycles, as defined in Section 436.

*Amended Ch. 1201, Stats. 1985. Effective January 1, 1986.*

### *Removal of Motor Vehicle to Foreign Jurisdiction for Registration or Sale*

11725. (a) No person shall transport or drive any motor vehicle from this state outside of the United States with the intent to register or sell such vehicle in a foreign jurisdiction, without first removing the license plates and delivering them to the department. Such person may obtain a permit from the department authorizing the operation of the unlicensed motor vehicle on the public highways of this state in order to reach such foreign jurisdiction. Failure to deliver the license plates as required by this section shall be a misdemeanor.

(b) No holder of any license, or any temporary permit for such license issued under this division, shall deliver any vehicle following sale without first removing all license plates from such vehicle when it is known by the licensee that the vehicle is to be exported to a foreign jurisdiction outside of the United States.

*Amended Ch. 934, Stats. 1976. Effective January 1, 1977.*

### *Recovery of Damages; Injunctive Relief*

11726. Any licensee suffering pecuniary loss because of any willful failure by any other licensee to comply with any provision of Article 1 (commencing with Section 11700) or 3 (commencing with Section 11900) of Chapter 4 of Division 5 or Article 3 (commencing with Section 3052) of Chapter 6 of Division 2 or with any regulation adopted by the department or any rule adopted or decision rendered by the board under authority vested in them may recover damages and reasonable attorney fees therefor in any court of competent jurisdiction. Any such licensee may also have appropriate injunctive relief in any such court.

*Added Ch. 996, Stats. 1973. Operative July 1, 1974.*

### *Revocation or Suspension of License*

11727. The revocation or suspension of a license of a manufacturer, manufacturer branch, distributor, distributor branch, or representative may be limited to one or more municipalities or counties or any other defined area, or may be revoked or suspended in a defined area only as to certain aspects of its business, or as to a specified dealer or dealers.

*Added Ch. 996, Stats. 1973. Operative July 1, 1974.*

### *Compromise Settlement Agreement: Monetary Penalties*

11728. As part of a compromise settlement agreement entered into pursuant to Section 11707 or 11808.5, the department may assess a monetary penalty of not more than two thousand five hundred dollars (\$2,500) per violation and impose a license suspension of not more than 30 days for any dealer who violates subdivision (r) of Section 11713. The extent of the penalties shall be based on the nature of the violation and effect of the violation on the purposes of this article. Except for the penalty limits provided for in Sections 11707 and 11808.5, all the provisions governing compromise settlement agreements for dealers, salespersons, and wholesalers apply to this section, and Section 11415.60 of the Government Code does not apply.

*Added Ch. 90, Stats. 1990. Effective May 1, 1990. Operative July 1, 1990.*

*Amended Ch. 1563, Stats. 1990. Effective January 1, 1991.*

*Amended Ch. 928, Stats. 1991. Effective October 14, 1991.*

*Amended Sec. 90, Ch. 938, Stats. 1995. Effective January 1, 1996. Operative July 1, 1997.*

### *Consignment Agreement Required*

11729.( ) (a) *Except as provided in subdivision (b), any dealer engaging in a consignment with an owner not licensed as a dealer, manufacturer, manufacturer branch, distributor, or a distributor branch licensed under this code, and the consignment is not otherwise prohibited by this code, shall execute a consignment agreement as prescribed by Section 11730. The failure of a dealer, when required under this section, to complete and comply with the terms of the prescribed consignment agreement for any vehicle which the dealer agrees to accept on consignment, or to pay the agreed amount to the consignor or his or her designee within 20 days after the date of sale of the vehicle, is cause for suspending or revoking the license of the dealer under paragraph (10) of subdivision (a) of Section 11705.*

(b) (1) A dealer conducting retail auction sales on behalf of a fleet owner shall execute a consignment agreement



applicable to all vehicles consigned for sale during the term of the agreement which contains, at a minimum, substantially all of the terms, phrases, conditions, and disclosures required by Section 11730, except the following are not required:

- (A) The description of a specific vehicle by year, make, identification number, license, state, or mileage.
- (B) The information contained in paragraph (4) of subdivision (b) of Section 11730.
- (2) If mutually agreeable, in lieu of the requirements of paragraph (7) of subdivision (b) of Section 11730, the consignor may provide the documents necessary to transfer the ownership of the vehicle to the consignee prior to the auction being held.
- (3) For purposes of this subdivision, "fleet owner" is either of the following:
  - (A) A person who is the registered or legal owner of 25 or more vehicles rsonsigned for sale to the dealer, government agency, or financial institution.

*Added Ch. 735, Stats. 1990. Effective January 1, 1991.*

*Amended Ch. 815, Stats. 1991. Effective January 1, 1992.*

*Amended Sec. 4, Ch. 672, Stats. 1999. Effective January 1, 2000.*

*The 1999 amendment added the italicized material, and at the point(s) indicated, deleted the following "Any"*

### *Consignment Agreement: Requirements*

11730. The consignment agreement required by Section 11729 shall contain all the following terms, phrases, conditions, and disclosures:

- (a) The date the agreement is executed.
- (b) All of the following statements:
  - (1) "I (We), the undersigned consigner(s), hereby consign and deliver possession of my(our) vehicle, which is a (Year) \_\_\_\_\_ (Make) \_\_\_\_\_ (ID#) \_\_\_\_\_ (License) \_\_\_\_\_ (State) \_\_\_\_\_ (Mileage) \_\_\_\_\_, to (Consignee) \_\_\_\_\_ (Dealer#) \_\_\_\_\_ for the sole purpose of selling the vehicle and paying, to the consignor or his or her designee from the proceeds of the sale of the vehicle, the amount agreed upon under terms of this agreement. This agreement is effective and valid only for a period of \_\_\_\_\_ days from this date."
  - (2) "At the termination of this agreement, the consignee shall return the vehicle to the consignor, or, at the option of both the consignor and consignee, enter into a new agreement."
  - (3) "If the vehicle is sold by the consignee during the term of this agreement, the money due the consignor shall be disbursed within 20 days after the date of sale in accordance with the terms of this agreement. As used in this agreement, a "sale" occurs when the consignee either (A) receives the purchase price or its equivalent or executes a conditional sales contract for the vehicle, or (B) when the purchaser takes delivery of the vehicle, whichever occurs first."
  - (4) "The following information shall be completed prior to the signing of this agreement:  
Current market value: \$ \_\_\_\_\_ Source: \_\_\_\_\_.  
Outstanding liens: \$ \_\_\_\_\_ Lienholder: \_\_\_\_\_.  
(Any difference between the outstanding amount shown and the actual payoff to the lienholder will be credited to the consignor.)  
Repairs to be made: \$ \_\_\_\_\_ Work Order \_\_\_\_\_.  
Moneys to the consignor: \_\_\_\_\_ percent of sale price, flat fee of \$ \_\_\_\_\_ or the following specific formula: \_\_\_\_\_."
  - (5) "Within 20 days after sale, the consignee shall make an accounting to the consignor of all of the following: date of sale, repairs authorized by consignor (supported by work records), exact amount of any liens payable to lienholders, evidence of payment of any liens, and the total sales price."



- (6) "The consigned vehicle is delivered to the consignee in trust for the exact terms set forth in this agreement. The consignee agrees to receive this vehicle in trust and not to permit its use for any other purpose other than contained in this agreement without the express written consent of the consignor."
- (7) "Upon payment of the moneys due the consignor, the consignor agrees to furnish the consignee those documents necessary to transfer the ownership of the vehicle to the purchaser.

Signatures: \_\_\_\_\_

Consignor Date \_\_\_\_\_

Address \_\_\_\_\_

Consignor Date \_\_\_\_\_

Address \_\_\_\_\_

- (8) "NOTICE TO CONSIGNOR: Failure of the consignee to comply with the terms of this agreement may be a violation of statute which could result in criminal or administrative sanctions, or both. If you feel the consignee has not complied with the terms of this agreement, please contact the Department of Motor Vehicles, Division of Investigations and Occupational Licensing, Bureau of Investigations, via the local Department of Motor Vehicles office."

*Added Ch. 735, Stats. 1990. Effective January 1, 1991.*

*Amended Ch. 815, Stats. 1991. Effective January 1, 1992.*

#### *Autobroker's Endorsement to Dealer's License*

11735. (a) No dealer shall engage in brokering a retail sales transaction without first paying the fee required by subdivision (d) of Section 9262 and obtaining from the department an autobroker's endorsement to the dealer's license. An autobroker's endorsement shall be automatically cancelled upon the cancellation, suspension, revocation, surrender, or expiration of a dealer's license.

(b) Upon the issuance of an autobroker's endorsement to a dealer's license, the department shall furnish the dealer with an autobroker's log. The autobroker's log shall remain the property of the department and may be taken up at any time for inspection.

(c) The autobroker's log shall contain spaces sufficient for the dealer to record the following information with respect to each retail sale brokered by that dealer:

(1) Vehicle identification number of brokered vehicle.

(2) Date of brokering agreement.

(3) Selling dealer's name, address, and dealer number.

(4) Name of consumer.

(5) Brokering dealer's name and dealer number.

(d) Nothing in this code prohibits a dealer who has been issued an autobroker's endorsement to his or her dealer's license from delivering, with the selling dealer's written approval, motor vehicles that have been sold pursuant to a duly executed motor vehicle purchase agreement or obtaining a consumer's signature on a selling dealer's motor vehicle purchase agreement that has already been executed by the selling dealer.

(e) When brokering a retail sale as an agent of the consumer, selling dealer, or both, the brokering dealer owes a fiduciary duty of utmost care, integrity, honesty, and loyalty in dealings with its principal or principals.

(f) For purposes of this section and Sections 11736, 11737, and 11738, "consumer" means any person who retains a dealer to perform brokering services in connection with a retail sale.

*Added Ch. 1253, Stats. 1994. Effective January 1, 1995.*

*Amended Sec. 7, Ch. 211, Stats. 1995. Effective January 1, 1996.*

### *Brokering: Unlawful Acts*

11736. It is unlawful for any dealer licensed under this article to do any of the following when brokering a retail sale:

- (a) Fail to execute a written brokering agreement, as described in Section 11738, and provide a completed copy to both of the following:
  - (1) Any consumer entering into the brokering agreement. The completed copy shall be provided prior to the consumer's signing of an agreement for the purchase of the vehicle described in the brokering agreement or, prior to accepting one hundred dollars (\$100) or more from that consumer, whichever occurs first.
  - (2) The selling dealer. The completed copy shall be provided prior to the selling dealer's entering into a purchase agreement with the consumer.
- (b) Accept a purchase deposit from any consumer that exceeds 2.5 percent of the selling price of the vehicle described in the brokering agreement.
- (c) Fail to refund any purchase money, including purchase deposits, upon demand by a consumer at any time prior to the consumer's signing of a vehicle purchase agreement with a selling dealer and taking delivery of the vehicle described in the brokering agreement.
- (d) Fail to cancel a brokering agreement and refund, upon demand, any money paid by a consumer, including any brokerage fee, under any of the following circumstances:
  - (1) When the final price of the brokered vehicle exceeds the purchase price listed in the brokering agreement.
  - (2) When the vehicle delivered is not as described in the brokering agreement.
  - (3) When the brokering agreement expires prior to the customer being presented with a purchase agreement from a selling dealer arranged through the brokering dealer that contains a purchase price at or below the price listed in the brokering agreement.
- (e) Act as a seller and provide brokering services, both in the same transaction.
- (f) Fail to disclose to the consumer and selling dealer, as soon as practicable, whether the autobroker receives or does not receive a fee or other compensation, regardless of the form or time of payment, from the selling dealer and the dollar amount of any fee that the consumer is obligated to pay to the autobroker. This arrangement shall be confirmed in a brokering agreement.
- (g) Fail to record in the dealer's autobroker log, for each brokered sale, all of the information specified in subdivision (c) of Section 11735.
- (h) Fail to maintain for a minimum of three years a copy of the executed brokering agreement and other notices and documents related to each brokered transaction.
- (i) Fail to advise the consumer, prior to accepting any money, that a full refund will be given if the motor vehicle ordered through the autobroker is not obtained for the consumer or if the service orally contracted for is not provided.

*Added Ch.1253, Stats. 1994. Effective January 1, 1995.*

*Amended Sec. 8, Ch. 211, Stats. 1995. Effective January 1, 1996.*

### *Brokering: Purchase Deposits: Trust Account*

11737. (a) A dealer who brokers a motor vehicle sale shall deposit directly into a trust account any purchase money, including purchase deposits, it receives from a consumer or a consumer's lender. This subdivision does not require a separate trust account for each brokered transaction.

- (b) The brokering dealer shall not in any manner encumber the corpus of the trust account except as follows:
  - (1) In partial or full payment to a selling dealer for a vehicle purchased by the brokering dealer's consumer.
  - (2) To make refunds.
- (c) Subdivision (b) shall not prevent payment of the interest earned on the trust account to the brokering dealer.

- (d) The brokering dealer shall serve as trustee of the trust account required by this section. If the brokering dealer is a partnership or a corporation, the managing partner of the partnership or the chief executive officer of the corporation shall be the trustee. The trustee may designate in writing that an officer or employee may manage the trust account if that officer or employee is under the trustee's supervision and control, and the original of that writing is on file with the department.
- (e) All trust accounts required by this section shall be maintained at a branch of a bank, savings and loan association, or credit union regulated by the state or the government of the United States.
- (f) The brokering dealer has a fiduciary responsibility with respect to all purchase money received from a consumer or consumers lender relative to a brokered sale transaction.
- (g) The following are deemed to be held in trust for consumers who have paid purchase money to a brokering dealer:
  - (1) All sums received by the brokering dealer whether or not required to be deposited in an actual trust account and regardless of whether any of these sums were required to be deposited or actually were deposited in a trust account.
  - (2) All property with which any of the sums described in paragraph (1) has been commingled if any of these sums cannot be identified because of the commingling.
- (h) Upon any judicially ordered distribution of any money or property required to be held in trust and after all expenses of distribution approved by the court have been paid, every consumer of a brokering dealer has a claim on the trust for purchase money payments made to the brokering dealer. Unless a consumer can identify his or her funds in the trust within the time established by the court, each consumer shall receive a proportional share based on the amount paid.

*Added Ch. 1253, Stats. 1994. Effective January 1, 1995.*

#### *Brokering Agreement: Form and Contents*

11738. The brokering agreement required by Section 11736 shall be printed in no smaller than 10-point type and shall contain not less than the following terms, conditions, requirements, and disclosures:

- (a) The name, address, license number, and telephone number of the autobroker.
- (b) A complete description, including line-make, model, year model, and color, of the vehicle and the desired options.
- (c) The following statement:
 

“The following information shall be completed prior to the signing of this brokering agreement:

Dollar Purchase Price of Vehicle: \_\_\_\_\_.

Date this agreement will expire if a purchase agreement from a selling dealer is not presented for your signature: \_\_\_\_\_.

Fee that you will be obligated to pay us, if any: \_\_\_\_\_.”
- (d) One of the following notices, as appropriate, printed in at least 10-point bold type and placed immediately below the statement required by subdivision (c):
  - (1) “We do not receive a fee from the selling dealer.”
  - (2) “We receive a fee from the selling dealer.”
- (e) The following notice on the face of the brokering agreement with a heading in at least 14-point bold type and the text in at least 10-point bold type, circumscribed by a line, that reads as follows:

#### NOTICE

This is an agreement to provide services; it is not an agreement for the purchase of a vehicle. California law gives you the following rights and protection:

Once you have signed this agreement, you have the right to cancel it and receive a full refund of any money paid, including any brokerage fee you may have paid, under any of the following circumstances:

- (1) The final price of the vehicle exceeds the purchase price listed above.
- (2) The vehicle is not as described above upon delivery.
- (3) This agreement expires prior to your being presented with a selling dealer's purchase agreement.

If you have paid a purchase deposit, you have the right to receive a refund of that deposit at any time prior to your signing a vehicle purchase agreement with a selling dealer. Purchase deposits are limited by law to no more than 2.5 percent of the purchase price of a vehicle and must be deposited by an autobroker or auto buying service in a federally insured trust account. If you are unable to resolve a dispute with your autobroker or auto buying service, please contact the Department of Motor Vehicles, Division of Investigations and Occupational Licensing, via your local office of the Department of Motor Vehicles.

- (f) The date the agreement is executed.
- (g) The signature of the autobroker and consumer.

*Added Ch. 1253, Stats. 1994. Effective January 1, 1995.*

#### *Brokered Retail New Motor Vehicle Sale: Dealer and Manufacturer Responsibilities*

11739. For purposes of title registration, warranties, rebates, and incentives, in a brokered retail new motor vehicle sale, the selling, franchised new car dealer, and not the autobroker, is responsible to apply for title in the name of the purchaser, to secure vehicle registration and the license plates for the purchaser, to secure the manufacturer's warranty in the name of the purchaser, and to make all applications for any manufacturer's rebates and incentives due the purchaser. If there is a manufacturer's recall, the consumer shall be notified directly by the manufacturer.

*Added Ch. 1253, Stats. 1994. Effective January 1, 1995.*

#### *Unlawful to Act as Vehicle Salesperson Without License*

11800. It shall be unlawful for any person to act as a vehicle salesperson without having first procured a license or temporary permit issued by the department or when that license or temporary permit issued by the department has been canceled, suspended, revoked, or invalidated or has expired.

*Amended Ch. 1563, Stats. 1990. Effective January 1, 1991.*

#### *Department's Authority After Suspension, Expiration, or Cancellation of License*

11824. The suspension, expiration, or cancellation of a vehicle salesperson's license issued under this article does not prevent the filing of an accusation for the revocation or suspension of the suspended, expired, or cancelled license as provided in Section 11806, and the department's decision that the license should be suspended or revoked. That determination may be considered in granting or refusing to grant any subsequent license authorized by this division to that licensee.

*Amended Ch. 1563, Stats. 1990. Effective January 1, 1991.*

#### **California Code of Regulations.** Title 13, Chapter 1.

#### **Business and Professions Code.** Sections 9889.50-9889.53, and 17500.5.

9889.50. The Legislature finds the following:

- (1) Thousands of California automobile owners each year require repair of their vehicles as a result of collision or other damage.
- (2) California automobile owners are suffering direct and in direct harm through unsafe, improper, incompetent, and fraudulent auto body repairs.

- (3) There is a lack of proper training and equipment that auto body repair shops need to meet the demands of the highly evolved and sophisticated automobile manufacturing industry.
- (4) California has no minimum standards or requirements for auto body repair shops.
- (5) Existing laws currently regulating the auto body industry could be strengthened.
- (6) There is a compelling need to increase competency and standards for the auto body repair industry.

9889.51. "Auto body repair shop" means a place of business operated by an automotive repair dealer where automotive collision repair or reconstruction of automobile or truck bodies is performed.

9889.52. An application for registration pursuant to Section 9884 shall designate that the applicant is registering as an auto body repair shop if the applicant intends to perform auto body repair. In addition, an application for registration to operate an auto body repair shop shall include a written statement signed under penalty of perjury that the applicant has been issued licenses or permits, if required by law, including, but not limited to, all of the following:

- (1) A city or county business license.
- (2) A State Board of Equalization identification or resale permit number.
- (3) An Environmental Protection Agency hazardous waste permit number.
- (4) An Air Quality Management District spray booth permit number.

9889.53. A check or draft issued to a repairer pursuant to Section 560 of the Insurance Code shall include the repairer's registration number or taxpayer identification number.

17500.5. (a) It is unlawful for any person, firm, corporation or association to falsely represent by advertisement the quantity of any article so advertised that will be sold to any one customer on his demand in a single transaction, and willfully or negligently to fail to include in such advertisement a statement that any restriction that is in fact put upon the quantity of any article so advertised that is sold or offered for sale to any one customer on his demand in a single transaction.

- (b) Any person, firm, corporation, or association who, by means of such false or negligent advertisement or publicity, induces any individual retail purchaser and consumer to enter any place of business designated therein seeking to buy any article so advertised or publicized, and then refuses to sell to such person the article at the price advertised in any quantity then available for sale on said premises, shall be liable to each person so induced and refused, for the losses and expenses thereby incurred, and the sum of fifty dollars (\$50) in addition thereto.
- (c) Nothing in this section shall affect any right a seller may have to refuse to extend credit to a customer, and this section shall not be applicable to a customer purchasing for resale.
- (d) The provisions of subdivision (b) are applicable only to actions brought in the name of, and on behalf of, a single plaintiff and shall not be applicable in multiple plaintiff or class actions.

**Civil Code.** Sections 2981-2984.4.

2981. As used in this chapter, unless the context otherwise requires:

- (a) "Conditional sale contract" means: (1) Any contract for the sale of a motor vehicle between a buyer and a seller, with or without accessories, under which possession is delivered to the buyer and either (A) the title vests in the buyer thereafter only upon the payment of all or a part of the price, or the performance of any other condition, or (B) a lien on the property is to vest in the seller as security for the payment of part or all of the price, or for the performance of any other condition, or (2) Any contract for the bailment of a motor vehicle between a buyer and a seller, with or without accessories, by which the bailee or lessee agrees to pay as compensation for use a sum substantially equivalent to or in excess of the aggregate value of the vehicle



and its accessories, if any, at the time the contract is executed, and by which it is agreed that the bailee or lessee will become, or for no other or for a nominal consideration has the option of becoming, the owner of the vehicle upon full compliance with the terms of the contract.

- (b) "Seller" means a person engaged in the business of selling or leasing motor vehicles under conditional sale contracts.
- (c) "Buyer" means the person who buys or hires a motor vehicle under a conditional sale contract.
- (d) "Person" includes an individual, company, firm, association, partnership, trust, corporation, limited liability company, or other legal entity.
- (e) "Cash price" means the amount for which the seller would sell and transfer to the buyer unqualified title to the motor vehicle described in the conditional sale contract, if the property were sold for cash at the seller's place of business on the date the contract is executed, and shall include taxes to the extent imposed on the cash sale and the cash price of accessories or services related to the sale such as delivery, installation, alterations, modifications, improvements, document preparation fees, a service contract, and payment of a prior credit or lease balance remaining on property being traded in.
- (f) "Downpayment" means any payment which the buyer pays or agrees to pay to the seller in cash or property value or money's worth at or prior to delivery by the seller to the buyer of the motor vehicle described in the conditional sale contract. The term shall also include the amount of any portion of the downpayment the payment of which is deferred until not later than the due date of the second otherwise scheduled payment, if the amount of the deferred downpayment is not subject to a finance charge. The term does not include any administrative finance charge charged, received or collected by the seller as provided in this chapter.
- (g) "Amount financed" means the amount required to be disclosed pursuant to paragraph (8) of subdivision (a) of Section 2982.
- (h) "Unpaid balance" means the difference between (e) and (f), plus all insurance premiums (except for credit life or disability insurance when the amount thereof is included in the finance charge), which are included in the contract balance, and the total amount paid or to be paid (1) to any public officer in connection with the transaction, and (2) for license, certificate of title, and registration fees imposed by law, and the amount of the state fee for issuance of a certificate of compliance or certificate of waiver pursuant to Section 9889.56 of the Business and Professions Code.
- (i) "Finance charge" has the meaning set forth for that term in Section 226.4 of Regulation Z. The term shall not include delinquency charges or collection costs and fees as provided by subdivision (k) of Section 2982, extension or deferral agreement charges as provided by Section 2982.3, or amounts for insurance, repairs to or preservation of the motor vehicle, or preservation of the security interest therein advanced by the holder under the terms of the contract.
- (j) "Total of payments" means the amount required to be disclosed pursuant to subdivision (h) of Section 226.18 of Regulation Z. The term includes any portion of the downpayment which is deferred until not later than the second otherwise scheduled payment and which is not subject to a finance charge. The term shall not include amounts for which the buyer may later become obligated under the terms of the contract in connection with insurance, repairs to or preservation of the motor vehicle, preservation of the security interest therein, or otherwise.
- (k) "Motor vehicle" means any vehicle required to be registered under the Vehicle Code which is bought for use primarily for personal or family purposes, and does not mean any vehicle which is bought for use primarily for business or commercial purposes or a mobilehome, as defined in Section 18008 of the Health and Safety Code which is sold on or after July 1, 1981. "Motor vehicle" does not include any trailer which is sold in conjunction with a vessel and which comes within the definition of "goods" under Section 1802.1.
- (l) "Purchase order" means a sales order, car reservation, statement of transaction or any other such instrument used in the conditional sale of a motor vehicle pending execution of a conditional sale contract. The purchase order shall conform to the disclosure requirements of subdivision (a) of Section 2982 and Section 2984.1 and the provisions of subdivision (m) of Section 9884 shall be applicable thereto.
- (m) "Regulation Z" means any rule, regulation or interpretation promulgated by the Board of Governors of the

Federal Reserve System (“Board”) under the federal Truth in Lending Act, as amended (15 U.S.C.1601, et seq.), and any interpretation or approval issued by an official or employee of the Federal Reserve System duly authorized by the board under the Truth in Lending Act, as amended, to issue such interpretations or approvals.

- (n) “Simple-interest basis” means the determination of a finance charge, other than an administrative finance charge, by applying a constant rate to the unpaid balance as it changes from time to time either: (1) Calculated on the basis of a 365-day year and actual days elapsed (although the seller may, but need not, adjust its calculations to account for leap years); reference in this chapter to the “365-day basis” shall mean this method of determining the finance charge, or (2) For contracts entered into prior to January 1, 1988, calculated on the basis of a 360-day year consisting of 12 months of 30 days each and on the assumption that all payments will be received by the seller on their respective due dates; reference in this chapter to the “360-day basis” shall mean this method of determining the finance charge.
- (o) “Precomputed basis” means the determination of a finance charge by multiplying the original unpaid balance of the contract by a rate and multiplying that product by the number of payment periods elapsing between the date of the contract and the date of the last scheduled payment.
- (p) “Service contract” means a contract in writing to perform, over a fixed period of time or for a specified duration, services relating to the maintenance or repair, or both, of the motor vehicle described in the conditional sale contract.

2981.5. A contract for the bailment or leasing of a motor vehicle, with or without accessories, which establishes the maximum for which a bailee or lessee could be held liable at the end of the lease or bailment period, or upon an earlier termination, by reference to the value of the vehicle at such time, is not a contract by which the bailee or lessee will become or for no other or for a nominal consideration has the option of becoming the owner of the vehicle, for the purposes of paragraph (2) of subdivision (a) of Section 2981 or any other provision of this chapter.

2981.7. All contracts entered into between a buyer and a seller on or after January 1, 1983, shall provide for the calculation of the finance charge contemplated by item (A) of paragraph (1) of subdivision (j) of Section 2982 on the simple-interest basis, if the date on which the final installment is due, according to the original terms of the contract, is more than 62 months after the date of the contract.

2981.8. No contract shall provide for a finance charge which is determined in part by the precomputed basis and in part by the simple-interest basis except for any finance charge permitted by subdivisions (a) and (c) of Section 2982.8.

2981.9. Every conditional sale contract subject to this chapter shall be in writing and, if printed, shall be printed in type no smaller than 6-point, and shall contain in a single document all of the agreements of the buyer and seller with respect to the total cost and the terms of payment for the motor vehicle, including any promissory notes or any other evidences of indebtedness. The conditional sale contract or a purchase order shall be signed by the buyer or his or her authorized representative and by the seller or its authorized representative. An exact copy of the contract or purchase order shall be furnished to the buyer by the seller at the time the buyer and the seller have signed it. No motor vehicle shall be delivered pursuant to a contract subject to this chapter until the seller delivers to the buyer a fully executed copy of the conditional sale contract or purchase order and any vehicle purchase proposal and any credit statement which the seller has required or requested the buyer to sign and which he or she has signed during the contract negotiations. The seller shall not obtain the signature of the buyer to a contract when it contains blank spaces to be filled in after it has been signed.

2982. Every conditional sale contract subject to this chapter shall contain the disclosures required by Regulation Z whether or not Regulation Z applies to the transaction. In addition, to the extent applicable, the contract shall contain the other disclosures and notices required by, and shall satisfy the requirements and limitations of, this section. The disclosures required by subdivision (a) may be itemized or subtotaled to a greater extent than as required by that subdivision and shall be made together and in the sequence set forth in that subdivision. All other disclosures and notices may appear in the contract in any location or sequence and may be combined or interspersed with other provisions of the contract.

- (a) The contract shall contain the following disclosures, as applicable, which shall be labeled “itemization of the

amount financed”:

- (1) (A) The cash price, exclusive of document preparation fees, taxes imposed on the sale, pollution control certification fees, prior credit or lease balance on property being traded in, and the amount charged for a service contract.
  - (B) The fee to be retained by the seller for document preparation.
  - (C) The fee charged by the seller for certifying that the motor vehicle complies with applicable pollution control requirements.
  - (D) Taxes imposed on the sale.
  - (E) The amount charged for a service contract.
  - (F) The prior credit or lease balance remaining on property being traded in, as required by paragraph (6). The disclosure required by this subparagraph shall be labeled “prior credit or lease balance (see downpayment and trade-in calculation).”
- (G) The total cash price, which is the sum of subparagraphs (A) to (F), inclusive.
- (2) Amounts paid to public officials for the following:
  - (A) Vehicle license fees.
  - (B) Registration, transfer, and titling fees.
  - (C) Smog impact fees.
- (3) The aggregate amount of premiums agreed, upon execution of the contract, to be paid for policies of insurance included in the contract, excluding the amount of any insurance premium included in the finance charge.
- (4) The amount of the state fee for issuance of a certificate of compliance, noncompliance, exemption, or waiver pursuant to any applicable pollution control statute.
- (5) A subtotal representing the sum of the foregoing items.
- (6) The amount of the buyer’s downpayment itemized to show the following:
  - (A) The agreed value of the property being traded in.
  - (B) The prior credit or lease balance, if any, owing on the property being traded in.
  - (C) The net agreed value of the property being traded in, which is the difference between the amounts disclosed in subparagraphs (A) and (B). If the prior credit or lease balance of the property being traded in exceeds the agreed value of the property, a negative number shall be stated.
  - (D) The amount of any portion of the downpayment to be deferred until not later than the due date of the second regularly scheduled installment under the contract and which is not subject to a finance charge.
  - (E) The amount of any manufacturer’s rebate applied or to be applied to the downpayment.
  - (F) The remaining amount paid or to be paid by the buyer as a down-payment.
  - (G) The total downpayment. If the sum of subparagraphs (C) to (F), inclusive, is zero or more, that sum shall be stated as the total downpayment and no amount shall be stated as the prior credit or lease balance under subparagraph (F) of paragraph (1). If the sum of subparagraphs (C) to (F), inclusive, is less than zero, then that sum, expressed as a positive number, shall be stated as the prior credit or lease balance under subparagraph (F) of paragraph (1), and zero shall be stated as the total downpayment. The disclosure required by this subparagraph shall be labeled “total downpayment” and shall contain a descriptor indicating that if the total downpayment is a negative number, a zero shall be disclosed as the total downpayment and a reference made that the remainder shall be included in the disclosure required pursuant to subparagraph (F) of paragraph (1).

- (7) The amount of any administrative finance charge, labeled “prepaid finance charge.”
- (8) The difference between item (5) and the sum of items (6) and (7), labeled “amount financed.”
- (b) No particular terminology is required to disclose the items set forth in subdivision (a) except as expressly provided in that subdivision.
- (c) If payment of all or a portion of the downpayment is to be deferred, the deferred payment shall be reflected in the payment schedule disclosed pursuant to Regulation Z.
- (d) If the downpayment includes property being traded in, the contract shall contain a brief description of that property.
- (e) The contract shall contain the names and addresses of all persons to whom the notice required under Section 2983.2 and permitted under Sections 2983.5 and 2984 is to be sent.
- (f) (1) Where the contract includes a finance charge determined on the precomputed basis, the contract shall identify the method of computing the unearned portion of the finance charge in the event of prepayment in full of the buyer’s obligation and contain a statement of the amount or method of computation of any charge that may be deducted from the amount of any unearned finance charge in computing the amount that will be credited to the obligation or refunded to the buyer. The method of computing the unearned portion of the finance charge shall be sufficiently identified with a reference to the actuarial method if the computation will be under that method. The method of computing the unearned portion of the finance charge shall be sufficiently identified with a reference to the Rule of 78’s, the sum of the digits, or the sum of the periodic time balances method in all other cases, and those references shall be deemed to be equivalent for disclosure purposes.
- (2) Where the contract includes a finance charge which is determined on the simple-interest basis but provides for a minimum finance charge in the event of prepayment in full, the contract shall contain a statement of that fact and the amount of the minimum finance charge or its method of calculation.
- (g) (1) Where the contract includes a finance charge which is determined on the precomputed basis and provides that the unearned portion of the finance charge to be refunded upon full prepayment of the contract is to be determined by a method other than actuarial, the contract shall contain a notice, in at least 10-point boldface type if the contract is printed, reading as follows: “Notice to buyer: (1) Do not sign this agreement before you read it or if it contains any blank spaces to be filled in. (2) You are entitled to a completely filled-in copy of this agreement. (3) You can prepay the full amount due under this agreement at any time and obtain a partial refund of the finance charge if it is \$1 or more. Because of the way the amount of this refund will be figured, the time when you prepay could increase the ultimate cost of credit under this agreement. (4) If you default in the performance of your obligations under this agreement, the vehicle may be repossessed and you may be subject to suit and liability for the unpaid indebtedness evidenced by this agreement.”
- (2) Where the contract includes a finance charge which is determined on the precomputed basis and provides for the actuarial method for computing the unearned portion of the finance charge upon prepayment in full, the contract shall contain a notice, in at least 10-point boldface type if the contract is printed, reading as follows: “Notice to buyer: (1) Do not sign this agreement before you read it or if it contains any blank spaces to be filled in. (2) You are entitled to a completely filled-in copy of this agreement. (3) You can prepay the full amount due under this agreement at anytime and obtain a partial refund of the finance charge if it is \$1 or more. (4) If you default in the performance of your obligations under this agreement, the vehicle may be repossessed and you may be subject to suit and liability for the unpaid indebtedness evidenced by this agreement.”
- (3) Where the contract includes a finance charge which is determined on the simple-interest basis, the contract shall contain a notice, in at least 10-point boldface type if the contract is printed, reading as follows: “Notice to buyer: (1) Do not sign this agreement before you read it or if it contains any blank spaces to be filled in. (2) You are entitled to a completely filled-in copy of this agreement. (3) You can prepay the full amount due under this agreement at any time. (4) If you default in the performance of your obligations under this agreement, the vehicle may be repossessed and you may be subject to suit and liability for the unpaid indebtedness evidenced by this agreement.”

- (h) The contract shall contain a notice in at least 8-point boldface type, acknowledged by the buyer, that reads as follows: "If you have a complaint concerning this sale, you should try to resolve it with the seller. Complaints concerning unfair or deceptive practices or methods by the seller may be referred to the city attorney, the district attorney, or an investigator for the Department of Motor Vehicles, or any combination thereof. After this contract is signed, the seller may not change the financing or payment terms unless you agree in writing to the change. You do not have to agree to any change, and it is an unfair or deceptive practice for the seller to make a unilateral change. \_\_\_\_\_ Buyer's Signature"
- (i) (1) The contract shall contain an itemization of any insurance included as part of the amount financed disclosed pursuant to paragraph (3) of subdivision (a) and of any insurance included as part of the finance charge. The itemization shall identify the type of insurance coverage and the premium charged therefor, and, if the insurance expires before the date of the last scheduled installment included in the repayment schedule, the term of the insurance shall be stated.
- (2) If any charge for insurance (other than for credit life or disability) is included in the contract balance and disbursement of any part thereof is to be made more than one year after the date of the conditional sale contract, any finance charge on the amount to be disbursed after one year shall be computed from the month the disbursement is to be made to the due date of the last installment under the conditional sale contract.
- (j) (1) Except for contracts in which the finance charge or portion thereof is determined by the simple-interest basis and the amount financed disclosed pursuant to paragraph (8) of subdivision(a) is more than two thousand five hundred dollars (\$2,500), the dollar amount of the disclosed finance charge shall not exceed the greater of:
- (A) (i) One and one-half percent on so much of the unpaid balance as does not exceed two hundred twenty-five dollars (\$225), 11/6 percent on so much of the unpaid balance in excess of two hundred twenty-five dollars (\$225) as does not exceed nine hundred dollars (\$900) and 5/6 of 1 percent on so much of the unpaid balance in excess of nine hundred dollars (\$900) as does not exceed two thousand five hundred dollars (\$2,500); or
- (ii) One percent of the entire unpaid balance; multiplied in either case by the number of months (computed on the basis of a full month for any fractional month period in excess of 15 days) elapsing between the date of the contract and the due date of the last installment; or
- (B) If the finance charge is determined by the precomputed basis, twenty-five dollars (\$25); or
- (C) If the finance charge or a portion thereof is determined by the simple-interest basis:
- (i) Twenty-five dollars (\$25) if the unpaid balance does not exceed one thousand dollars (\$1,000),
- (ii) fifty dollars (\$50) if the unpaid balance exceeds one thousand dollars (\$1,000) but does not exceed two thousand dollars (\$2,000), or
- (iii) seventy-five dollars (\$75) if the unpaid balance exceeds two thousand dollars (\$2,000).
- (2) The holder of the contract shall not charge, collect, or receive a finance charge which exceeds the disclosed finance charge, except to the extent
- (A) caused by the holder's receipt of one or more payments under a contract which provides for determination of the finance charge or a portion thereof on the 365-day basis at a time or times other than as originally scheduled whether or not the parties enter into an agreement pursuant to Section 2982.3,
- (B) permitted by paragraph (2), (3), or (4) of subdivision (c) of Section 226.17 of Regulation Z, or
- (C) permitted by subdivisions (a) and (c) of Section 2982.8.
- (3) If the finance charge or a portion thereof is determined by the simple-interest basis and the amount of the unpaid balance exceeds five thousand dollars (\$5,000), the holder of the contract may, in lieu of its right to a minimum finance charge under subparagraph (C) of paragraph (1), charge, receive, or collect on the date of the contract an administrative finance charge not to exceed seventy-five dollars (\$75), provided



that the sum of the administrative finance charge and the portion of the finance charge determined by the simple-interest basis shall not exceed the maximum total finance charge permitted by subparagraph (A) of paragraph (1). Any administrative finance charge which is charged, received, or collected by a holder shall be deemed a finance charge earned on the date of the contract.

- (4) When a contract provides for unequal or irregular payments, or payments on other than a monthly basis, the maximum finance charge shall be at the effective rate provided for in paragraph (1), having due regard for the schedule of installments.
- (k) The contract may provide that for each installment in default for a period of not less than 10 days the buyer shall pay a delinquency charge in an amount not to exceed in the aggregate 5 percent of the delinquent installment, which amount may be collected only once on any installment regardless of the period during which it remains in default. Payments timely received by the seller under an extension or deferral agreement shall not be subject to a delinquency charge unless the charge is permitted by Section 2982.3. The contract may provide for reasonable collection costs and fees in the event of delinquency.
- (l) Notwithstanding any provision of a contract to the contrary, the buyer may pay at any time before maturity the entire indebtedness evidenced by the contract without penalty. In the event of prepayment in full:
  - (1) If the finance charge was determined on the precomputed basis, the amount required to prepay the contract shall be the outstanding contract balance as of that date, provided, however, that the buyer shall be entitled to a refund credit in the amount of the unearned portion of the finance charge, except as provided in paragraphs (3) and (4). The amount of the unearned portion of the finance charge shall be at least as great a proportion of the finance charge, including any additional finance charge imposed pursuant to Section 2982.8 or other additional charge imposed because the contract has been extended, deferred, or refinanced, as the sum of the periodic monthly time balances payable more than 15 days after the date of prepayment bears to the sum of all the periodic monthly time balances under the schedule of installments in the contract or, if the contract has been extended, deferred, or refinanced, as so extended, deferred, or refinanced. Where the amount of the refund credit is less than one dollar (\$1), no refund credit need be made by the holder. Any refund credit may be made in cash or credited to the outstanding obligations of the buyer under the contract.
  - (2) If the finance charge or a portion thereof was determined on the simple-interest basis, the amount required to prepay the contract shall be the outstanding contract balance as of that date, including any earned finance charges which are unpaid as of that date and, if applicable, the amount provided in paragraph (3), and provided further that in cases where a finance charge is determined on the 360-day basis, the payments theretofore received will be assumed to have been received on their respective due dates regardless of the actual dates on which the payments were received.
  - (3) Where the minimum finance charge provided by subparagraph (B) or subparagraph (C) of paragraph (1) of subdivision (j), if either is applicable, is greater than the earned finance charge as of the date of prepayment, the holder shall be additionally entitled to the difference.
  - (4) The provisions of this subdivision shall not impair the right of the seller or the seller's assignee to receive delinquency charges on delinquent installments and reasonable costs and fees as provided in subdivision (k) or extension or deferral agreement charges as provided in Section 2982.3.
  - (5) Notwithstanding any provision of a contract to the contrary, whenever the indebtedness created by any contract is satisfied prior to its maturity through surrender of the motor vehicle, repossession of the motor vehicle, redemption of the motor vehicle after repossession, or any judgment, the outstanding obligation of the buyer shall be determined as provided in paragraph (1) or (2); provided further that the buyer's outstanding obligation shall be computed by the holder as of the date the holder recovers the value of the motor vehicle through disposition thereof or judgment is entered or, if the holder elects to keep the motor vehicle in satisfaction of the buyer's indebtedness, as of the date the holder takes possession of the motor vehicle.
- (m) Notwithstanding any other provision of this chapter to the contrary, any information required to be disclosed in a conditional sale contract under this chapter may be disclosed in any manner, method, or terminology

required or permitted under Regulation Z, as in effect at the time that disclosure is made, except that permitted by paragraph (2) of subdivision (c) of Section 226.18 of Regulation Z, provided that all of the requirements and limitations set forth in subdivision (a) of this section are satisfied. Nothing in this chapter prohibits the disclosure in that contract of additional information required or permitted under Regulation Z, as in effect at the time that disclosure is made.

- (n) If the seller imposes a fee for document preparation, the contract shall contain a disclosure that the fee is not a governmental fee.
- (o) No seller may impose an application fee for a transaction governed by this chapter.
- (p) The seller or holder may charge and collect a fee not to exceed fifteen dollars (\$15) for the return by a depository institution of a dishonored check, negotiated order of withdrawal, or share draft issued in connection with the contract, if the contract so provides or if the contract contains a generalized statement that the buyer may be liable for collection costs incurred in connection with the contract.
- (q) The contract shall disclose on its face, by printing the word “new” or “used” within a box outlined in red, that is not smaller than one-half inch high and one-half inch wide, whether the vehicle is sold as a new vehicle, as defined in Section 430 of the Vehicle Code, or a used vehicle, as defined in Section 665 of the Vehicle Code.
- (r) The contract shall contain a notice with a heading in at least 12-point bold type and the text in at least 10-point bold type, circumscribed by a line, immediately above the contract signature line, that reads as follows:

<b>THERE IS NO COOLING OFF PERIOD</b>	
California law does not provide for a “cooling off” or other cancellation period for	
vehicle sales. Therefore, you cannot later cancel this contract simply because	
you change your mind, decide the vehicle costs too much, or wish you had acquired	
a different vehicle. After you sign below, you may only cancel this contract with	
the agreement of the seller or for legal cause, such as fraud.	

2982.1. It shall be unlawful for any seller to induce or attempt to induce any person to enter into a contract subject to this chapter by offering a rebate, discount, commission, or other consideration, contingent upon the happening of a future event, on the condition that the buyer either sells, or gives information or assistance for the purpose of leading to a sale by the seller of, the same or related goods.

2982.3. (a) The holder of a conditional sale contract may, upon agreement with the buyer, extend the scheduled due date or defer the scheduled payment of all or of any part of any installment or installments payable thereunder. No charge shall be made for any such extension or deferment unless the agreement for such extension or deferment is in writing and signed by the parties thereto. However, the seller or holder may, as an adjunct to or to assist in efforts to collect one or more delinquent installments on the contract, advise one or more obligors on the contract, either in writing or orally, that the due date for one or more installments under the contract shall be extended, with no charge being made for such extension other than any applicable late charge provided for in the contract.

- (b) Where the contract includes a finance charge determined on the precomputed basis, the holder may charge and contract for the payment of an extension or deferral agreement charge by the buyer and collect and receive the same, but such charge may not exceed an amount equal to 1 percent per month simple interest on the amount of the installment or installments, or part thereof, extended or deferred for the period of extension or deferral. Such period shall not exceed the period from the date when such extended or deferred installment or installments, or part thereof, would have been payable in the absence of such extension or deferral to the date when such installment or installments, or part thereof, are made payable under the agreement of extension or deferment; except that a minimum charge of one dollar (\$1) for the period of extension or deferral may be made in any case where the extension or deferral agreement charge, when computed at such rate, amounts to less than one dollar (\$1).
- (c) Where the contract includes a finance charge determined on the simple-interest basis, the holder may

charge and contract for the payment of an extension or deferral agreement charge by the buyer and collect and receive the same, but the charge for the extension or deferral agreement may not exceed the lesser of twenty-five dollars (\$25) or 10 percent of the then outstanding principal balance of the contract. Such charge shall be in addition to any finance charges which accrue because such extended or deferred payments are received at a time other than as originally scheduled.

2982.5. (a) Nothing contained in this chapter shall be deemed to affect a loan, or the security therefor, between a purchaser of a motor vehicle and a supervised financial organization, other than the seller of the motor vehicle, all or a portion of which loan is used in connection with the purchase of a motor vehicle. As used herein "supervised financial organization" means a person organized, chartered, or holding a license or authorization certificate under a law of this state or the United States to make loans and subject to supervision by an official or agency of this state or the United States.

- (b) Nothing in this chapter shall be deemed to prohibit the seller's assisting the buyer in obtaining a loan upon any security from any third party to be used as a part or all of the downpayment or any other payment on a conditional sale contract or purchase order; provided that the conditional sale contract sets forth on its face the amount of the loan, the finance charge, the total thereof, the number of installments scheduled to repay the loan and the amount of each installment, that the buyer may be required to pledge security or the loan, which security must be mutually agreed to by the buyer and the lender and notice to the buyer in at least eight-point type that he or she is obligated for the installment payments on both the conditional sale contract and the loan. The seller shall not provide any security or other guarantee of payment on the loan, nor shall the seller receive any commission or other remuneration for assisting the buyer to obtain the loan. If the buyer obligates himself to purchase, or receives possession of, the motor vehicle prior to securing the loan, and if the buyer upon appropriate application for the loan is unable to secure the loan, on the conditions stated in the conditional sale contract, the conditional sale contract or purchase order shall be deemed rescinded and all consideration thereupon shall be returned by the respective parties without demand.
- (c) The proceeds of any such loan payable to the seller after the date of the contract but prior to the due date of the second payment otherwise scheduled thereunder shall not be subject to a finance charge and the amount thereof shall be disclosed pursuant to subparagraph (B) of paragraph (6) of subdivision (a) of Section 2982.
- (d) Nothing in this chapter shall be deemed to prohibit the seller's assisting the buyer in obtaining a loan from any third party to be used to pay for the full purchase price, or any part thereof, of a motor vehicle provided that each of the following provisions shall apply:
  - (1) The loan may be upon any security, but except as provided in paragraph (2), the loan shall not be secured in whole or in part by alien on real property. Any lien on real property taken in violation of this section shall be void and unenforceable.
  - (2) A lien on real property may be taken to secure a loan of seven thousand five hundred dollars (\$7,500) or more used to pay the full purchase price, or any part thereof, of a recreational vehicle, as defined in Section 18010 of the Health and Safety Code, which is not less than 20 feet in length.
  - (3) The provisions of Sections 2983.2, 2983.3, and 2984.4 shall apply to the loan, but shall not authorize the lender or the lender's successor in interest to charge for any costs, fees, or expenses or to obtain any other benefit which the lender is prohibited from charging or obtaining under any regulatory law applicable to the lender. Notwithstanding this paragraph, the provisions of Sections 2983.2 and 2983.3 shall not apply to a loan made by a lender licensed under Division 9 (commencing with Section 22000) or Division 10 (commencing with Section 24000) of the Financial Code.
  - (4) The lender or the lender's successor in interest shall be subject to all claims and defenses which the buyer could assert against the seller, but liability may not exceed the amount of the loan.
  - (5) If the buyer becomes obligated to purchase, or receives possession of, the motor vehicle prior to obtaining the loan, the agreement between the buyer and the seller shall set forth on its face the amount of the loan, the finance charge, the total thereof, the number of installments scheduled to repay the loan and the amount of each installment, that the buyer may be required to pledge security for the loan, which security must be mutually agreed to by the buyer and the lender, and notice to the buyer in at least eight-point type that the buyer is obligated for the installment payments on the loan and for any payments which may be

due on the agreement between the buyer and the seller. The seller shall not provide any security or other guarantee of payment on the loan, and the seller shall not receive any commission or other remuneration for assisting the buyer to obtain the loan. If the buyer upon proper application for the loan is unable to obtain the loan, on the condition stated in the agreement between the buyer and the seller, the agreement shall be deemed rescinded and all consideration thereupon shall be returned by the respective parties without demand.

- (6) Any waiver by the buyer of the provisions of this section shall be void and unenforceable. This subdivision shall not apply to state or federally chartered banks and savings and loan associations and shall not be construed to affect existing law regarding a seller's assisting a buyer to obtain a loan from a bank or savings and loan association or any loan obtained by the buyer from those lenders.

2982.7. (a) Any payment made by a buyer to a seller pending execution of a conditional sale contract shall be refunded to the buyer in the event the conditional sale contract is not executed.

- (b) In the event of breach by the seller of a conditional sale contract or purchase order where the buyer leaves his motor vehicle with the seller as downpayment and such motor vehicle is not returned by the seller to the buyer for whatever reason, the buyer may recover from the seller either the fair market value of the motor vehicle left as a downpayment or its value as stated in the contractor purchase order, whichever is greater. The recovery shall be tendered to the buyer within five business days after the breach.

- (c) The remedies of the buyer provided for in subdivision (b) are nonexclusive and cumulative and shall not preclude the buyer from pursuing any other remedy which he may have under any other provision of law.

2982.8. (a) If a buyer is obligated under the terms of the conditional sale contract to maintain insurance on the vehicle and subsequent to the execution of the contract the buyer either fails to maintain or requests the holder to procure the insurance, any amounts advanced by the holder to procure the insurance may be the subject of finance charges from the date of advance as provided in subdivision (e).

- (b) These amounts shall be secured as provided in the contract and permitted by Section 2984.2 if the holder notifies the buyer in writing of his or her option to repay those amounts in any one of the following ways:

(1) Full payment within 10 days from the date of giving or mailing the notice.

(2) Full amortization during the term of the insurance.

(3) If offered by the holder, full amortization after the term of the conditional sale contract, to be payable in installments which do not exceed the average payment allocable to a monthly period under the contract.

(4) If offered by the holder, a combination of the methods described in paragraphs (2) and (3), so that there is some amortization during the term of the insurance, with the remainder of the amortization being accomplished after the term of the conditional sale contract, to be payable in installments which do not exceed the average payment allocable to a monthly period under the original terms of the contract.

(5) If offered by the holder, any other amortization plan. If the buyer neither pays in full the amounts advanced nor notifies the holder in writing of his or her choice regarding amortization options before the expiration of 10 days from the date of giving or mailing the notice by the holder, the holder may amortize the amounts advanced on a secured basis pursuant to paragraph (2) or, if offered by the holder as an option to the buyer, paragraph (3) or (4).

- (c) The written notification described in subdivision (b) shall also set forth the amounts advanced by the holder and, with respect to each amortization plan the amount of the additional finance charge, the sum of the amounts advanced and the additional finance charge, the number of installments required, the amount of each installment and the date for payment of the installments. In addition, the notice shall contain a statement in contrast in red print in at least 8-point bold type, which reads as follows: "WARNING—IT IS YOUR RESPONSIBILITY UNDER CALIFORNIA LAW TO OBTAIN LIABILITY INSURANCE OR BE SUBJECT TO PENALTIES FOR VIOLATING SECTION 16020 OF THE VEHICLE CODE, WHICH MAY INCLUDE LOSS OF LICENSE OR FINE. THE INSURANCE ACQUIRED BY THE LIENHOLDER DOES NOT PROVIDE LIABILITY COVERAGE AND DOES NOT SATISFY YOUR RESPONSIBILITY UNDER CALIFORNIA LAW."



- (d) If subsequent to the execution of the contract the holder advances amounts for repairs to or preservation of the motor vehicle or preservation of the holder's security interest therein and such advances are occasioned by the buyer's default under the contract, such advances may be the subject of finance charges from the date of advance as provided in subdivision (e) and shall be secured as provided in the contract and permitted by Section 2984.2.
- (e) The maximum rate of finance charge which may be imposed on amounts advanced by the holder subsequent to the execution of the contract for insurance, repairs to or preservation of the motor vehicle, or preservation of the holder's security interest therein, shall not exceed the annual percentage rate disclosed pursuant to Section 2982.

2982.9. In the event a buyer obligates himself to purchase, or receive possession of, a motor vehicle pursuant to a contract or purchase order, and the seller knows that the buyer intends to obtain financing from a third party without the assistance of the seller, and the buyer is unable to obtain such financing, the contract or purchase order shall be deemed rescinded and all consideration thereupon shall be returned by the respective parties without demand.

2983. If the seller, except as the result of an accidental or bona fide error in computation, violates any provision of Section 2981.9 or of subdivision (a), (j), or (k) of Section 2982, the conditional sale contract shall not be enforceable, except by a bona fide purchaser, assignee or pledgee for value or until after the violation is corrected as provided in Section 2984, and if the violation is not corrected the buyer may recover from the seller the total amount paid, pursuant to the terms of the contract, by the buyer to the seller or his assignee. The amount recoverable for property traded in as all or part of the downpayment shall be equal to the agreed cash value of such property as the value appears on the conditional sale contract or the fair market value of such property as of the time the contract is made, whichever is greater.

2983.1. If the seller or holder of a conditional sale contract, except as the result of an accidental or bona fide error of computation, violates any provision of subdivision (l) of Section 2982, the buyer may recover from such person three times the amount of any finance charge paid to that person. If a holder acquires a conditional sale contract without actual knowledge of the violation by the seller of Section 2981.9 or of subdivision (a), (j), or (k) of Section 2982, the contract shall be valid and enforceable by such holder except (unless the violation is corrected as provided in Section 2984) the buyer is excused from payment of the unpaid finance charge. If a holder acquires a conditional sale contract with knowledge of such violation of Section 2981.9 or of subdivision (a), (j), or (k) of Section 2982, the conditional sale contract shall not be enforceable except by a bona fide purchaser, assignee or pledgee for value or unless the violation is corrected as provided in Section 2984, and if the violation is not corrected the buyer may recover from the person to whom payment was made the amounts specified in Section 2983. When a conditional sale contract is not enforceable under Section 2983 or 2983.1, the buyer may elect to retain the motor vehicle and continue the contract in force or may, with reasonable diligence, elect to rescind the contract and return the motor vehicle. The value of the motor vehicle so returned shall be credited as restitution by the buyer without any decrease which results from the passage of time in the cash price of the motor vehicle as such price appears on the conditional sale contract.

2983.2. (a) Except where the motor vehicle has been seized as described in paragraph (6) of subdivision (b) of Section 2983.3, any provision in any conditional sale contract for the sale of a motor vehicle to the contrary notwithstanding, at least 15 days' written notice of intent to dispose of a repossessed or surrendered motor vehicle shall be given to all persons liable on the contract. The notice shall be personally served or shall be sent by certified mail, return receipt requested, or first-class mail, postage prepaid, directed to the last known address of the persons liable on the contract. If those persons are married to each other, and, according to the most recent records of the seller or holder of the contract, reside at the same address, one notice addressed to both persons at that address is sufficient. Except as otherwise provided in Section 2983.8, those persons shall be liable for any deficiency after disposition of the repossessed or surrendered motor vehicle only if the notice prescribed by this section is given within 60 days of repossession or surrender and does all of the following:

- (1) Sets forth that those persons shall have a right to redeem the motor vehicle by paying in full the indebtedness evidenced by the contract until the expiration of 15 days from the date of giving or mailing the notice and provides an itemization of the contract balance and of any delinquency, collection or repossession costs



and fees and sets forth the computation or estimate of the amount of any credit for unearned finance charges or canceled insurance as of the date of the notice.

- (2) States either that there is a conditional right to reinstate the contract until the expiration of 15 days from the date of giving or mailing the notice and all the conditions precedent thereto or that there is no right of reinstatement and provides a statement of reasons therefor.
  - (3) States that, upon written request, the seller or holder shall extend for an additional 10 days the redemption period or, if entitled to the conditional right of reinstatement, both the redemption and reinstatement periods. The seller or holder shall provide the proper form for applying for the extensions with the substance of the form being limited to the extension request, spaces for the requesting party to sign and date the form, and instructions that it must be personally served or sent by certified or registered mail, return receipt requested, to a person or office and address designated by the seller or holder and received before the expiration of the initial redemption and reinstatement periods.
  - (4) Discloses the place at which the motor vehicle will be returned to those persons upon redemption or reinstatement.
  - (5) Designates the name and address of the person or office to whom payment shall be made.
  - (6) States the seller's or holder's intent to dispose of the motor vehicle upon the expiration of 15 days from the date of giving or mailing the notice, or if by mail and either the place of deposit in the mail or the place of address is outside of this state, the period shall be 20 days instead of 15 days, and further, that upon written request to extend the redemption period and any applicable installment period for 10 days, the seller or holder shall without further notice extend the period accordingly.
  - (7) Informs those persons that upon written request, the seller or holder will furnish a written accounting regarding the disposition of the motor vehicle as provided for in subdivision (b). The seller holder shall advise them that this request must be personally served or sent first-class mail, postage prepaid, or certified mail, return receipt requested, to a person or office and address designated by the seller or holder.
  - (8) Includes notice, in at least 10-point bold type if the notice is printed, reading as follows: "NOTICE. YOU MAY BE SUBJECT TO SUIT AND LIABILITY IF THE AMOUNT OBTAINED UPON DISPOSITION OF THE VEHICLE IS INSUFFICIENT TO PAY THE CONTRACT BALANCE AND ANY OTHER AMOUNTS DUE."
  - (9) Informs those persons that upon the disposition of the motor vehicle, they will be liable for the deficiency balance plus interest at the contract rate, or at the legal rate of interest pursuant to Section 3289 if there is no contract rate of interest, from the date of disposition of the motor vehicle to the date of entry of judgment. The notice prescribed by this section shall not affect the discretion of the court to strike out an unconscionable interest rate in the contract for which the notice is required, nor affect the court in its determination of whether the rate is unconscionable.
- (b) Unless automatically provided to the buyer within 45 days after the disposition of the motor vehicle, the seller or holder shall provide to any person liable on the contract within 45 days after their written request, if the request is made within one year after the disposition, a written accounting regarding the disposition. The accounting shall itemize:
- (1) The gross proceeds of the disposition.
  - (2) The reasonable and necessary expenses incurred for retaking, holding, preparing for and conducting the sale and to the extent provided for in the agreement and not prohibited by law, reasonable attorney fees and legal expenses incurred by the seller or holder in retaking the motor vehicle from any person not a party to the contract.
  - (3) The satisfaction of indebtedness secured by any subordinate lien or encumbrance on the motor vehicle if written notification of demand therefor is received before distribution of the proceeds is completed. If requested by the seller or holder, the holder of a subordinate lien or encumbrance must seasonably

furnish reasonable proof of its interest, and unless it does so, the seller or holder need not comply with its demand.

(c) In all sales which result in a surplus, the seller or holder shall furnish an accounting as provided in subdivision (b) whether or not requested by the buyer. Any surplus shall be returned to the buyer within 45 days after the sale is conducted.

(d) This section shall not apply to a loan made by a lender licensed under Division 9 (commencing with Section 22000) or Division 10 (commencing with Section 24000) of the Financial Code.

2983.3. (a) In the absence of default in the performance of any of the buyer's obligations under the contract, the seller or holder may not accelerate the maturity of any part or all of the amount due thereunder or repossess the motor vehicle.

(b) If after default by the buyer, the seller or holder repossesses or voluntarily accepts surrender of the motor vehicle, any person liable on the contract shall have a right to reinstate the contract and the seller or holder shall not accelerate the maturity of any part or all of the contract prior to expiration of the right to reinstate, unless the seller or holder reasonably and in good faith determines that any of the following has occurred:

(1) The buyer or any other person liable on the contract by omission or commission intentionally provided false or misleading information of material importance on his or her credit application.

(2) The buyer, any other person liable on the contract, or any permissive user in possession of the motor vehicle, in order to avoid repossession has concealed the motor vehicle or removed it from the state.

(3) The buyer, any other person liable on the contract, or any permissive user in possession of the motor vehicle, has committed or threatens to commit acts of destruction, or has failed to take care of the motor vehicle in a reasonable manner, so that the motor vehicle has become substantially impaired in value, or the buyer, any other person liable on the contract, or any nonoccasional permissive user in possession of the motor vehicle has failed to take care of the motor vehicle in a reasonable manner, so that the motor vehicle may become substantially impaired in value.

(4) The buyer or any other person liable on the contract has committed, attempted to commit, or threatened to commit criminal acts of violence or bodily harm against an agent, employee, or officer of the seller or holder in connection with the seller's or holder's repossession of or attempt to repossess the motor vehicle.

(5) The buyer has knowingly used the motor vehicle, or has knowingly permitted it to be used, in connection with the commission of a criminal offense, other than an infraction, as a consequence of which the motor vehicle has been seized by a federal, state, or local agency or authority pursuant to federal, state, or local law.

(6) The motor vehicle has been seized by a federal, state, or local public agency or authority pursuant to (A) Section 1324 of Title 8 of the United States Code or Part 274 of Title 8 of the Code of Federal Regulations, (B) Section 881 of Title 21 of the United States Code or Part 9 of Title 28 of the Code of Federal Regulations, or (C) other federal, state, or local law, including regulations, and, pursuant to that other law, the seizing authority, as a precondition to the return of the motor vehicle to the seller or holder, prohibits the return of the motor vehicle to the buyer or other person liable on the contract or any third person claiming the motor vehicle by or through them or otherwise effects or requires the termination of the property rights in the motor vehicle of the buyer or other person liable on the contract or claimants by or through them.

(c) Exercise of the right to reinstate the contract shall be limited to once in any 12-month period and twice during the term of the contract.

(d) The provisions of this subdivision cover the method by which a contract shall be reinstated with respect to curing events of default which were a ground for repossession or occurred subsequent to repossession:

(1) Where the default is the result of the buyer's failure to make any payment due under the contract, the buyer or any other person liable on the contract shall make the defaulted payments and pay any applicable delinquency charges.

- (2) Where the default is the result of the buyer's failure to keep and maintain the motor vehicle free from all encumbrances and liens of every kind, the buyer or any other person liable on the contract shall either satisfy all encumbrances and liens or, in the event the seller or holder satisfies the encumbrances and liens, the buyer or any other person liable on the contract shall reimburse the seller or holder for all reasonable costs and expenses incurred therefor.
- (3) Where the default is the result of the buyer's failure to keep and maintain insurance on the motor vehicle, the buyer or any other person liable on the contract shall either obtain the insurance or, in the event the seller or holder has obtained the insurance, the buyer or any other person liable on the contract shall reimburse the seller or holder for premiums paid and all reasonable costs and expenses, including, but not limited to, any finance charge in connection with the premiums permitted by Section 2982.8, incurred therefor.
- (4) Where the default is the result of the buyer's failure to perform any other obligation under the contract, unless the seller or holder has made a good faith determination that the default is so substantial as to be incurable, the buyer or any other person liable on the contract shall either cure the default or, if the seller or holder has performed the obligation, reimburse the seller or holder for all reasonable costs and expenses incurred in connection therewith.
- (5) Additionally, the buyer or any other person liable on the contract shall, in all cases, reimburse the seller or holder for all reasonable and necessary collection and repossession costs and fees incurred, including attorney's fees and legal expenses expended in retaking and holding the vehicle.
- (e) If the seller or holder denies the right to reinstatement under subdivision (b) or paragraph (4) of subdivision (d), the seller or holder shall have the burden of proof that the denial was justified in that it was reasonable and made in good faith. If the seller or holder fails to sustain the burden of proof, the seller or holder shall not be entitled to a deficiency, but it shall not be presumed that the buyer is entitled to damages by reason of the failure of the seller or holder to sustain the burden of proof.
- (f) This section shall not apply to a loan made by a lender licensed under Division 9 (commencing with Section 22000) or Division 10 (commencing with Section 24000) of the Financial Code.

2983.35. (a) If a creditor has requested a cosigner as a condition of granting credit to any person for the purpose of acquisition of a motor vehicle, the creditor or holder shall give the cosigner a written notice of delinquency prior to the repossession of the motor vehicle if the motor vehicle is to be repossessed pursuant to the motor vehicle credit agreement. The written notice of delinquency shall be personally served or shall be sent by certified mail, return receipt requested, or first-class mail, postage prepaid, directed to the last known address of the cosigner. If the last known address of the buyer and the cosigner are the same, a single written notice of delinquency given to both the borrower and cosigner prior to repossession satisfies the cosigner notice requirement of this section.

- (b) A creditor or holder who fails to comply with this section may not recover any costs associated with the repossession of the vehicle from the cosigner.
- (c) This section applies to any motor vehicle credit agreement, notwithstanding Section 2982.5.
- (d) The following definitions govern the construction of this section.
  - (1) "Cosigner" means a buyer who executes a motor vehicle credit agreement but does not in fact receive possession of the motor vehicle that is the subject of the agreement.
  - (2) "Creditor" means a seller or lender described in paragraph(4).
  - (3) "Holder" means any other person who is entitled to enforce the motor vehicle credit agreement.
  - (4) "Motor vehicle credit agreement" means any conditional sales contract as defined in Section 2981 and any contract or agreement in which a lender gives value to enable a purchaser to acquire a motor vehicle and in which the lender obtains a security interest in the motor vehicle.

2983.4. Reasonable attorney's fees and costs shall be awarded to the prevailing party in any action on a

contract or purchase order subject to the provisions of this chapter regardless of whether the action is instituted by the seller, holder or buyer. Where the defendant alleges in his answer that he tendered to the plaintiff the full amount to which he was entitled, and thereupon deposits in court, for the plaintiff, the amount so tendered, and the allegation is found to be true, then the defendant is deemed to be a prevailing party within the meaning of this section.

2983.5. (a) An assignee of the seller's right is subject to all equities and defenses of the buyer against the seller, notwithstanding an agreement to the contrary, but the assignee's liability may not exceed the amount of the debt owing to the assignee at the time of the assignment.

(b) The assignee shall have recourse against the seller to the extent of any liability incurred by the assignee pursuant to this section regardless of whether the assignment was with or without recourse.

2983.6. Any person who shall willfully violate any provision of this chapter shall be guilty of a misdemeanor.

2983.7. No conditional sale contract shall contain any provision by which:

(a) The buyer agrees not to assert against the seller a claim or defense arising out of the sale or agrees not to assert against an assignee such a claim or defense.

(b) A power of attorney is given to confess judgment in this state, or an assignment of wages is given; provided, that nothing herein contained shall prohibit the giving of an assignment of wages contained in a separate instrument pursuant to Section 300 of the Labor Code.

(c) The buyer waives any right of action against the seller or holder of the contract or other person acting on his behalf, for any illegal act committed in the collection of payments under the contract or in the repossession of the motor vehicle.

(d) The buyer executes a power of attorney appointing the seller or holder of the contract, or other person acting on his behalf, as the buyer's agent in the collection of payments under the contract or in the repossession of the motor vehicle.

(e) The buyer relieves the seller from liability for any legal remedies which the buyer may have against the seller under the contract or any separate instrument executed in connection therewith.

(f) The seller or holder of the contract is given the right to commence action on a contract under the provisions of this chapter in a county other than the county in which the contract was in fact signed by the buyer, the county in which the buyer resides at the commencement of the action, the county in which the buyer resided at the time the contract was entered into, or in the county in which the motor vehicle purchased pursuant to such contract is permanently garaged.

2983.8. Notwithstanding Section 2983.2 or any other provision of law, no deficiency judgment shall lie in any event in any of the following instances:

(a) After any sale of any mobilehome for which a permit is required pursuant to Section 35780 or 35790 of the Vehicle Code for failure of the purchaser to complete his conditional sale contract given to the seller to secure payment of the balance of the purchase price of such mobilehome. The provisions of this subdivision shall not apply in the event there is substantial damage to the mobilehome other than wear and tear from normal usage. This subdivision shall apply only to contracts entered into on or after the effective date of the act that enacted this subdivision and before July 1, 1981.

(b) After any sale or other disposition of a motor vehicle unless the court has determined that the sale or other disposition was in conformity with the provisions of this chapter and the relevant provisions of Division 9 (commencing with Section 9101) of the Commercial Code, including Section 9504. The determination may be made upon an affidavit unless the court requires a hearing in the particular case.

2983.8. Notwithstanding Section 2983.2 or any other provision of law, no deficiency judgment shall lie in any event in any of the following instances:

(a) After any sale of any mobilehome for which a permit is required pursuant to Section 35780 or 35790 of the

Vehicle Code for failure of the purchaser to complete his or her conditional sale contract given to the seller to secure payment of the balance of the purchase price of such mobilehome. The provisions of this subdivision shall not apply in the event there is substantial damage to the mobilehome other than wear and tear from normal usage. This subdivision shall apply only to contracts entered into on or after the effective date of the act that enacted this subdivision and before July 1, 1981.

- (b) After any sale or other disposition of a motor vehicle unless the court has determined that the sale or other disposition was in conformity with the provisions of this chapter and the relevant provisions of Division 9 (commencing with Section 9101) of the Commercial Code, including Sections 9610, 9611, 9612, 9613, 9614, 9615, and 9626. The determination may be made upon an affidavit unless the court requires a hearing in the particular case.

2984. Any failure to comply with any provision of this chapter (commencing with Section 2981) may be corrected by the holder, provided, however, that a willful violation may not be corrected unless it is a violation appearing on the face of the contract and is corrected within 30 days of the execution of the contract or within 20 days of its sale, assignment or pledge, whichever is later, provided that the 20-day period shall commence with the initial sale, assignment or pledge of the contract, and provided that any other violation appearing on the face of the contract may be corrected only within such time periods. A correction which will increase the amount of the contract balance or the amount of any installment as such amounts appear on the conditional sale contract shall not be effective unless the buyer concurs in writing to the correction. If notified in writing by the buyer of such a failure to comply with any provision of this chapter, the correction shall be made within 10 days of notice. Where any provision of a conditional sale contract fails to comply with any provision of this chapter, the correction shall be made by mailing or delivering a corrected copy of the contract to the buyer. Any amount improperly collected by the holder from the buyer shall be credited against the indebtedness evidenced by the contract or returned to the buyer. A violation corrected as provided in this section shall not be the basis of any recovery by the buyer or affect the enforceability of the contract by the holder and shall not be deemed to be a substantive change in the agreement of the parties.

2984.1. Every conditional sale contract shall contain a statement in contrasting red print in at least 8-point bold type which shall satisfy the requirements of Section 5604 of the Vehicle Code and be signed or initialed by the buyer, as follows:

THE MINIMUM PUBLIC LIABILITY INSURANCE LIMITS PROVIDED IN LAW MUST BE MET BY EVERY PERSON WHO PURCHASES A VEHICLE. IF YOU ARE UNSURE WHETHER OR NOT YOUR CURRENT INSURANCE POLICY WILL COVER YOUR NEWLY ACQUIRED VEHICLE IN THE EVENT OF AN ACCIDENT, YOU SHOULD CONTACT YOUR INSURANCE AGENT.

WARNING: YOUR PRESENT POLICY MAY NOT COVER COLLISION DAMAGE OR MAY NOT PROVIDE FOR FULL REPLACEMENT COSTS FOR THE VEHICLE BEING PURCHASED. IF YOU DO NOT HAVE FULL COVERAGE, SUPPLEMENTAL COVERAGE FOR COLLISION DAMAGE MAY BE AVAILABLE TO YOU THROUGH YOUR INSURANCE AGENT OR THROUGH THE SELLING DEALER. HOWEVER, UNLESS OTHERWISE SPECIFIED, THE COVERAGE YOU OBTAIN THROUGH THE DEALER PROTECTS ONLY THE DEALER, USUALLY UP TO THE AMOUNT OF THE UNPAID BALANCE REMAINING AFTER THE VEHICLE HAS BEEN REPOSSESSED AND SOLD.

FOR ADVICE ON FULL COVERAGE THAT WILL PROTECT YOU IN THE EVENT OF LOSS OR DAMAGE TO YOUR VEHICLE, YOU SHOULD CONTACT YOUR INSURANCE AGENT.

THE BUYER SHALL SIGN TO ACKNOWLEDGE THAT HE/SHE UNDERSTANDS THESE PUBLIC LIABILITY TERMS AND CONDITIONS. s/s \_\_\_\_\_.

No person shall print for use as a sales contract form, any form which does not comply with this section.

2984.2. (a) No conditional sale contract, and no agreement between a seller and a buyer made in connection with a conditional sale contract, may provide for the inclusion of title to or a lien upon any property other than the following:

- (1) The motor vehicle which is the subject matter of the sale, including any replacement of that motor



vehicle, or accessories, accessions, or replacement of those accessories or accessions, or proceeds thereof.

- (2) The proceeds of any insurance policies covering the motor vehicle which are required by the seller or the returned premiums of any such policies if the premiums for such policies are included in the amount financed.
  - (3) The proceeds of any credit insurance policies which the buyer purchases in connection with the motor vehicle conditional sale contract or the returned premiums of any such policies if the premiums for such policies are included in the amount financed.
  - (4) The proceeds and returned price of any service contract if the cost of such contract is included in the amount financed.
- (b) Subdivision (a) shall not apply to any agreement which meets the requirements of subdivision (b) of Section 2982.5 and otherwise complies with this chapter, nor, with respect to a mobilehome sold prior to July 1, 1981, to any agreement whereby a security interest is taken in real property on which the mobilehome is installed on a foundation system pursuant to Section 18551 of the Health and Safety Code.
- (c) A provision in violation of this section shall be void.

2984.3. Any acknowledgment by the buyer of delivery of a copy of a conditional sale contract or purchase order and any vehicle purchase proposal and any credit statement that the seller has required or requested the buyer to sign, and that he or she has signed, during the contract negotiations, shall be printed or written in size equal to at least 10-point boldface type and, if contained in the contract, shall appear directly above the space reserved for the buyer's signature or adjacent to any other notices required by law to be placed immediately above the signature space. The buyer's written acknowledgment, conforming to the requirements of this section, of delivery of a completely filled-in copy of the contract, and a copy of the other documents shall be a rebuttable presumption of delivery in any action or proceeding by or against a third party without knowledge to the contrary when he or she acquired his or her interest in the contract. If the third party furnishes the buyer a copy of the documents, or a notice containing the disclosures identified in subdivision (a) of Section 2982, and stating that the buyer shall notify the third party in writing within 30 days if a copy of the documents was not furnished, and that notification is not given, it shall be conclusively presumed in favor of the third party that copies of the documents were furnished as required by this chapter.

2984.4. An action on a contract or purchase order under the provisions of this chapter shall be tried in the county in which the contract or purchase order was in fact signed by the buyer, in the county in which the buyer resided at the time the contract or purchase order was entered into, in the county in which the buyer resides at the commencement of the action or in the county in which the motor vehicle purchased pursuant to the contract or purchase order is permanently garaged.

In any action involving multiple claims, or causes of action, venue shall lie in such counties so long as there is at least one claim or cause of action arising from a contract subject to the provisions of this chapter.

If within the county there is a municipal court, having jurisdiction of the subject matter, established in the judicial district in which the contract, conditional sale contract, or purchase order was in fact signed by the buyer, or in which the buyer resided at the time the contract, conditional sale contract, or purchase order was entered into, or in which the buyer resides at the commencement of the action, or in which the motor vehicle purchased pursuant to the contract is permanently garaged, that court is the proper court for the trial of the action. Otherwise, any court in the county, having jurisdiction of the subject matter, is the proper court for the trial of the action.

In any action subject to the provisions of this section, concurrently with the filing of the complaint, the plaintiff shall file an affidavit stating facts showing that the action has been commenced in a county or judicial district described in this section as a proper place for the trial of the action. Those facts may be stated in a verified complaint and shall not be stated on information or belief. When that affidavit is filed with the complaint, a copy thereof shall be served with the summons. If a plaintiff fails to file the affidavit or state facts in a verified complaint required by this section, no further proceedings shall be had, but the court shall, upon its own motion or upon motion of any party, dismiss the action without prejudice; however, the court may, on such terms as may

be just, permit the affidavit to be filed subsequent to the filing of the complaint and a copy of the affidavit shall be served on the defendant. The time to answer or otherwise plead shall date from that service.

**Government Code.** Section 6157 (a) - (d).

6157. (a) The state, and each city, whether general law or chartered, county, and district, each subdivision, department, board, commission, body, or agency of the foregoing, shall accept personal checks drawn in its favor or in favor of a designated official thereof, in payment for any license, permit, or fee, or in payment of any obligation owing to the public agency or trust deposit, if the person issuing the check furnishes to the person authorized to receive payment satisfactory proof of residence in this state and if the personal check is drawn on a banking institution located in this state.

- (b) If any personal check offered in payment pursuant to this section is returned without payment, for any reason, a reasonable charge for the returned check, not to exceed the actual costs incurred by the public agency, may be imposed to recover the public agency's processing and collection costs. This charge may be added to, and become part of, any underlying obligation other than an obligation which constitutes a lien on real property, and a different method of payment for that payment and future payments by this person may be prescribed.
- (c) The acceptance of a personal check pursuant to this section constitutes payment of the obligation owed to the payee public agency to the extent of the amount of the check as of the date of acceptance when, but not before, the check is duly paid.
- (d) The provisions in subdivision (b) prohibiting a returned check charge being added to, and becoming a part of, an obligation which constitutes a lien on real property do not apply to obligations under the Veterans' Farm and Home Purchase Act of 1974 (Article 3.1 (commencing with Section 987.50) of Chapter 6 of Division 4 of the Military and Veterans Code).

**Health and Safety Code.** Sections 43150-43156, 43200-43213, and 43600-43660.

43150. The Legislature finds and declares that the people of this state, in order to achieve the purposes of this part, have a special interest in assuring that only those new motor vehicles and new motor vehicle engines which meet this state's stringent emission standards and test procedures, and which have been certified pursuant to this chapter, are used or registered in this state. The Legislature also finds and declares that this special interest must be protected in a manner which will not unduly or unreasonably infringe upon the right of the people of this state and other states to travel and do business interstate.

43151. (a) No person who is a resident of, or who operates an established place of business within, this state shall import, deliver, purchase, rent, lease, acquire, or receive a new motor vehicle, new motor vehicle engine, or motor vehicle with a new motor vehicle engine for use, registration, or resale in this state unless such motor vehicle engine or motor vehicle has been certified pursuant to this chapter. No person shall attempt or assist in any such action.

- (b) This article shall not apply to a vehicle acquired by a resident of this state for the purpose of replacing a vehicle registered to such resident which was damaged or became inoperative beyond reasonable repair or was stolen while out of this state; provided that such replacement vehicle is acquired out of state at the time the previously owned vehicle was either damaged or became inoperative or was stolen. This article shall not apply to a vehicle transferred by inheritance, or by a decree of divorce, dissolution, or legal separation entered by a court of competent jurisdiction, or to any vehicle sold after the effective date of the amendments to this subdivision at the 1979-80 Regular Session of the Legislature if the vehicle was registered in this state before such effective date.
- (c) This chapter shall not apply to any motor vehicle having a certificate of conformity issued pursuant to the Clean Air Act (42U.S.C. Sec. 7401 et seq.) and originally registered in another state by a resident of that state who subsequently establishes residence in this state and who, upon registration of the vehicle in this state, provides satisfactory evidence to the Department of Motor Vehicles of the previous residence and registration. This subdivision shall become operative 180 calendar days after the state board adopts regulations for the certification of new direct import vehicles pursuant to Section 43203.5.

(d) "Established place of business," as used in this section, means a place actually occupied either continuously or at regular periods.

43152. No person who is engaged in this state in the business of selling to an ultimate purchaser, or renting or leasing new motor vehicles or new motor vehicle engines, including, but not limited to, manufacturers, distributors, and dealers, shall intentionally or negligently import, deliver, purchase, receive, or otherwise acquire a new motor vehicle, new motor vehicle engine, or vehicle with a new motor vehicle engine which is intended for use primarily in this state, for sale or resale to an ultimate purchaser who is a resident of or doing business in this state, or for registration, leasing or rental in this state, which has not been certified pursuant to this chapter. No person shall attempt or assist in any such act.

43153. No person who is engaged in this state in the business of selling to an ultimate purchaser or renting or leasing new motor vehicles or new motor vehicle engines, including, but not limited to, manufacturers, distributors, and dealers, shall intentionally or negligently sell, or offer to sell, to an ultimate purchaser who is a resident of or doing business in this state, or lease, offer to lease, rent, or offer to rent, in this state any new motor vehicle, new motor vehicle engine, or vehicle with a new motor vehicle engine, which is intended primarily for use or for registration in this state, and which has not been certified pursuant to this chapter. No person shall attempt or assist in any such action.

43154. (a) Any person who violates any provision of this article shall be liable for a civil penalty not to exceed five thousand dollars (\$5,000) per vehicle.

(b) Any action to recover a penalty under this section shall be brought in the name of the people of the State of California in the superior court of the county where the violation occurred, or in the county where the defendant's residence or principal place of business is located, by the Attorney General on behalf of the state board, in which event all penalties adjudged by the court shall be deposited in the Air Pollution Control Fund, or by the district attorney or county attorney of such county, or by the city attorney of a city in that county, in which event all penalties adjudged by the court shall be deposited with the treasurer of the county or city, as the case may be.

43155. An action brought pursuant to Section 43154 to recover such civil penalties shall take special precedence over all other civil matters on the calendar of the court except those matters to which equal precedence on the calendar is granted by law.

43156. (a) For purposes of this article, it is conclusively presumed that the equitable or legal title to any motor vehicle with an odometer reading of 7,500 miles or more, has been transferred to an ultimate purchaser, except as provided in subdivision (b), and that the equitable or legal title to any motor vehicle with an odometer reading of less than 7,500 miles, has not been transferred to an ultimate purchaser.

(b) For purposes of this article, it is conclusively presumed that the equitable and legal title to any direct import vehicle which is less than two years old has not been transferred to an ultimate purchaser and that the equitable or legal title to any direct import motor vehicle which is at least two years old has been transferred to an ultimate purchaser. For purposes of this subdivision, the age of a motor vehicle shall be determined by the following, in descending order of preference:

(1) From the first calendar day of the model year as indicated in the vehicle identification number.

(2) From the last calendar day of the month the vehicle was delivered by the manufacturer as shown on the foreign title document.

(3) From January 1 of the same calendar year as the model year shown on the foreign title document.

(4) From the last calendar day of the month the foreign title document was issued.

43200. The state board may adopt a regulation to prohibit the sale and registration in this state of any new motor vehicle certified by the state board to which there has not been securely affixed on aside window to the rear of the driver or, if it cannot be so placed, to the windshield of the motor vehicle in accordance with paragraph (3) of subdivision (b) of Section 26708 of the Vehicle Code, by the manufacturer a decal on which the manufacturer

shall endorse clearly, distinctly, and legibly true and correct entries disclosing the following information concerning such motor vehicle:

- (a) The emission standards adopted by the state board pursuant to Section 43101 which are applicable to that motor vehicle.
- (b) For 1976 and subsequent model year motor vehicles, the exhaust emissions, based on quality audit tests of assembly line motor vehicles or, if required by the state board, as determined by the factory assembly line test for that motor vehicle, and, at the beginning of each model year, based on certification fleet data. Any such regulation may be adopted only if the state board finds that the regulation is (1) necessary to enforce or assure compliance with applicable statutes, standards, or procedures relating to vehicle emissions or (2) necessary for the protection and information of consumers. Nothing in this division or in any other statute shall be construed as prohibiting a purchaser from removing the decal required by this section, after the purchaser has taken possession of the vehicle.

43200.5. (a) The sale and registration in this state of any new motor vehicle is prohibited unless a decal in the form specified by the state board pursuant to subdivision (b) of Section 44254 has been securely affixed by the manufacturer to a window of the motor vehicle, and affixed in accordance with Section 43200 and any regulations adopted pursuant to Section 43200, which discloses the smog index for the vehicle.

- (b) This section does not apply to any authorized emergency vehicle, as defined in Section 165 of the Vehicle Code, or to any employer-provided carpool or vanpool vehicle.
- (c) This section shall become inoperative five years from the date determined pursuant to Section 32 of the act adding this section, and on the January 1 following that date is repealed.

43201. Any dealer or person holding a retail seller's permit who sells a new motor vehicle without the decal required by Section 43200 shall be subject to a civil penalty of not to exceed one thousand dollars (\$1,000). Any penalty recovered pursuant to this section shall be deposited into the General Fund.

43201. (a) Any dealer or person holding a retail seller's permit who sells a new motor vehicle without the decal required by Section 43200 or 43200.5 shall be subject to a civil penalty of not to exceed one thousand dollars (\$1,000).

- (b) Any penalty recovered pursuant to this section shall be deposited in the General Fund.
- (c) This section shall become inoperative five years from the date determined pursuant to Section 32 of the act adding this subdivision, and on the January 1 following that date is repealed.

43201. (a) Any dealer or person holding a retail seller's permit who sells a new motor vehicle without the decal required by Section 43200 shall be subject to a civil penalty of not to exceed one thousand dollars (\$1,000).

- (b) Any penalty recovered pursuant to this section shall be deposited into the General Fund.
- (c) This section shall become operative five years from the date determined pursuant to Section 32 of the act adding this section.

43202. No new motor vehicle required to meet the emission standards adopted by the state board pursuant to Section 43101 shall be sold and registered in this state unless the manufacturer thereof permits the state board to conduct surveillance testing of emissions of new motor vehicles at his assembly facilities, or at any other location where the manufacturer's assembly line testing is performed and assembly line testing records are kept. Authorization for the sale and registration of any new motor vehicle in this state may be rescinded or withheld if, at any time, the state board is prevented by the manufacturer from conducting surveillance of assembly line testing.

43203. (a) In connection with surveillance of emissions from new motor vehicles prior to their retail sale, the state board may, by regulation, impose fees on manufacturers of these vehicles to recover the state board's costs in conducting this surveillance.

- (b) A manufacturer who fails to pay a fee imposed pursuant to this section within 60 days after receiving an

invoice shall pay the state board an additional fee equal to 10 percent of the fee specified in subdivision (a). If the manufacturer notifies the state board, within 60 days after receiving the invoice, that additional information is needed to honor the invoice, the state board shall grant an additional 90 days for payment without the imposition of an additional fee. An additional interest fee equal to the rate of interest earned by the Pooled Money Investment Fund shall be imposed upon the fee specified in subdivision (a) and the additional fees specified in this subdivision and subdivision (c) for each 30-day period for which they remain unpaid, commencing 60 days after the receipt of the original invoice.

- (c) A manufacturer who fails to pay all the fees imposed pursuant to this section within one year from the date of receipt of the original invoice shall pay a penalty fee equal to 100 percent of the fees imposed pursuant to subdivisions (a) and (b). A manufacturer who fails to pay all the fees and penalties imposed pursuant to this section within two years from the date of receipt of the original invoice shall pay a penalty equal to 100 percent of the fees and penalties imposed pursuant to subdivisions (a) and (b) and to this subdivision, for each one-year period for which they remain unpaid.
- (d) Fees authorized by this section shall be imposed only for surveillance of emissions from new motor vehicles actually conducted.
- (e) Notwithstanding Section 13340 of the Government Code, all fees collected pursuant to subdivision (a) are continuously appropriated to the state board, to be credited as a reimbursement of the board's costs incurred in its program for the surveillance of emissions from new vehicles. All fees collected pursuant to subdivisions (b) and (c) shall be deposited by the state board into the Air Pollution Control Fund.

43203.5. The state board shall adopt, by regulation, a certification program for new direct import vehicles, as defined by Sections 39024.6, and 39042, which are less than two years old. The state board shall issue a certificate of conformance to each new direct import vehicle which meets the requirements of the certification program. Any bonding requirements for the certification program may not exceed one thousand dollars (\$1,000) per new direct import vehicle or engine. The model year designation for new direct import vehicles in an engine family shall be determined on the same basis as vehicles in the same engine family which are offered for sale in California by the manufacturer. The model year designation for any new direct import motor vehicle in an engine family which the manufacturer does not offer for sale in California shall be determined in accordance with the regulations adopted by the state board. The designations shall apply for all purposes of the certification program and for registration of new direct import vehicles. The state board shall, by regulation, impose fees to recover the state board's costs, including enforcement costs, of administration of the certification program. Failure to pay the fees within 60 days of receipt after notification by the state board shall result in the assessment of a 10 percent penalty. An additional interest assessment on the fees equivalent to the rate earned by the Pooled Money Investment Fund shall accrue at the end of each 30-day period that the fees remain unpaid. Nonpayment of the fees for more than one year shall result in the state board withholding future certification of new vehicles for sale in California. Fees collected in accordance with this section shall be deposited in the Air Pollution Control Fund.

43204. (a) The manufacturer of each motor vehicle or motor vehicle engine manufactured prior to the 1990 model-year shall warrant to the ultimate purchaser and each subsequent purchaser that the motor vehicle or motor vehicle engine is:

- (1) Designed, built, and equipped so as to conform, at the time of sale, with the applicable emission standards specified in this part.
  - (2) Free from defects in materials and workmanship which cause such motor vehicle or motor vehicle engine to fail to conform with applicable regulations for its useful life, determined pursuant to subdivision (b).
- (b) As used in subdivision (a), "useful life" of a motor vehicle or motor vehicle engine means:
- (1) In the case of light-duty motor vehicles, and motor vehicle engines used in such motor vehicles, a period of use of five years or 50,000 miles, whichever first occurs, except that, in the case of fuel metering and ignition systems and their component parts which are contained in the state board's "Emissions Warranty Parts List" dated December 14, 1978 (items I(A), I(C), III(A), III(C), III(E), IX(A), and IX(B)), and which are contained in vehicles or vehicle engines certified to the optional standards pursuant to Section



43101.5 and subject to subdivision (a) of Section 43009.5, "useful life" means a period of use of two years or 24,000 miles, whichever occurs first.

- (2) In the case of any other motor vehicle or motor vehicle engine, a period of use of five years or 50,000 miles, whichever first occurs, unless the state board determines that a period of use of greater duration or mileage is appropriate.

43205. (a) Commencing with the 1990 model-year, the manufacturer of each light-duty and medium-duty motor vehicle and motor vehicle engine shall warrant to the ultimate purchaser and each subsequent purchaser that the motor vehicle or motor vehicle engine meets all of the following requirements:

- (1) Is designed, built, and equipped so as to conform with the applicable emissions standards specified in this part.
  - (2) Is free from defects in materials and workmanship which cause the motor vehicle or motor vehicle engine to fail to conform with applicable requirements specified in this part for three years or 50,000 miles, whichever first occurs.
  - (3) Will, for a period of three years or 50,000 miles, whichever first occurs, pass a test established under Section 44012, but that the warranty shall not apply if the manufacturer demonstrates that the failure of the motor vehicle or motor vehicle engine to pass the test was directly caused by the abuse, neglect, or improper maintenance or repair of the vehicle or engine.
  - (4) Is free from defects in materials and workmanship in emission related parts which, at the time of certification by the state board, are estimated by the manufacturer to cost individually more than three hundred dollars (\$300) to replace, for a period of seven years or 70,000 miles, whichever first occurs.
- (b) The state board shall, by regulation, periodically revise the three hundred dollar (\$300) replacement cost level specified in paragraph (4) of subdivision (a) in accordance with the consumer price index, as published by the United States Bureau of Labor Statistics.
- (c) For purposes of this section and Sections 43204 and 43205.5, a motorcycle is not a light-duty vehicle.

43205.5. Commencing with the 1990 model-year, the manufacturer of each motor vehicle and motor vehicle engine, other than a light-duty or medium-duty motor vehicle or motor vehicle engine, shall warrant to the ultimate purchaser and each subsequent purchaser that the motor vehicle or motor vehicle engine meets all of the following requirements:

- (a) Is designed, built, and equipped so as to conform with the applicable emission standards specified in this part for a period of use determined by the state board.
- (b) Is free from defects in materials and workmanship which cause the motor vehicle or motor vehicle engine to fail to conform with applicable requirements specified in this part for the same or lesser period of use established under subdivision (a).

43206. Commencing January 1, 1982, and annually thereafter, every person who manufactures new motor vehicles for sale in California shall file with the state board a report as to the person's efforts and progress in meeting state standards adopted pursuant to Section 43101 and federal standards and research objectives specified in Section 7521 of Title 42 of the United States Code. The reports shall be available to the public. However, the manufacturer may designate that a portion of the report is a trade secret and the portion shall not be released except to the state board employees specifically designated by the executive officer, unless the state board, after an investigation, determines that the portion is not in fact a trade secret. State board employees having access to the trade secret shall maintain its confidentiality. The state board shall conduct investigations with respect to the reports as it deems necessary. No report is required from the manufacturer once all models of motor vehicles of the manufacturer which are sold in California and which are subject to the state standards adopted pursuant to Section 43101, and the federal standards and research objectives specified in Section 7521 of Title 42 of the United States Code, meet all those standards and objectives.

43207. The state board may revoke outstanding certification of new motor vehicles for sale in California if the manufacturer thereof willfully fails to file any semiannual report required by Section 43206 or files a report

which is deemed by the state board to inadequately describe the manufacturer's efforts and progress. The state board may also withhold future certification of such manufacturer's vehicles until such time as the manufacturer offers for sale in California vehicles which meet the standards promulgated pursuant to Section 1857f-1(b)(1) of Title 42 of the United States Code.

43208. Factory assembly line test procedures shall not apply to light-duty motor vehicles, if (a) the manufacturer thereof advises the state board in writing that the manufacturer does not intend to sell more than 1,000 motor vehicles in California in a given model year, and (b) the manufacturer does not sell more than 1,000 motor vehicles of its make in such a year. Nothing in this section shall be construed to prohibit the state board from requiring testing by the applicable certifying test procedure of up to 2 percent of the motor vehicles of such a manufacturer sold in California. This section shall not apply to 1976 and later model year motor vehicles.

43209. No manufacturer or distributor who pays a penalty pursuant to Section 43212 shall add the amount of such penalty to the cost of any motor vehicles sold by such manufacturer, and any provision of any contract of sale including such penalty as part of the cost of a motor vehicle shall be void and unenforceable.

43210. (a) The state board shall provide, by regulation, for the testing of motor vehicles on factory assembly lines or in a manner which the state board determines best suited to carry out the purpose of this part and this section.

(b) If a motor vehicle does not meet the prescribed assembly line standards, the motor vehicle may be retested according to the official test procedures upon which original certification for that make and model vehicle was based. Any motor vehicle meeting the applicable emission standards by either of the testing procedures shall be deemed to meet the emission standards of the State of California and shall be eligible for sale in this state.

(c) The regulations adopted by the state board pursuant to subdivision (a) shall provide for reduced, statistically valid testing of motor vehicles contained in large engine families and for which initial test results indicate compliance with the applicable standards.

43210.5. The state board shall, by regulation, require manufacturers of motor vehicles and motor vehicle engines to determine the extent to which emissions-related defects exist in each engine family and to recommend the diagnostic and repair procedures that can result in the identification and correction of these defects under vehicle inspection and maintenance programs.

43211. No new motor vehicle shall be sold in California that does not meet the emission standards adopted by the state board, and any manufacturer who sells, attempts to sell, or causes to be offered for sale a new motor vehicle that fails to meet the applicable emission standards shall be subject to a civil penalty of five thousand dollars (\$5,000) for each such action. Any penalty recovered pursuant to this section shall be deposited into the General Fund.

43212. Any manufacturer or distributor who does not comply with the emission standards or the test procedures adopted by the state board shall be subject to a civil penalty of fifty dollars (\$50) for each vehicle which does not comply with the standards or procedures and which is first sold in this state. The payment of such penalties to the state board shall be a condition to the further sale by such manufacturer or distributor of motor vehicles in this state. Any penalty recovered pursuant to this section shall be deposited into the Air Pollution Control Fund.

43213. Sections 43211 and 43212 shall be enforced by the state board, and may be enforced by the Department of the California Highway Patrol, the Department of Motor Vehicles, and the bureau.

43600. The state board shall adopt and implement emission standards for used motor vehicles for the control of emissions therefrom, which standards the state board has found to be necessary and technologically feasible to carry out the purposes of this division; however, the installation of certified devices on used motor vehicles shall not be mandated except by statute. Such standards may be applicable to motor vehicle engines, rather than to motor vehicles.

43601. The state board shall certify exhaust devices for 1955 through 1965 model year motor vehicles.

43602. An exhaust device certified by the state board pursuant to Section 43601 shall not allow emissions

exceeding any of the following:

- (a) 350 parts per million hydrocarbons.
- (b) 2 percent carbon monoxide.
- (c) 800 parts per million nitrogen oxide. However, if no exhaust device meets all three of the maximums specified in subdivisions (a), (b), and (c), the state board may certify an exhaust device which meets any two of the three maximums specified, if the installation of such a device in a motor vehicle would not increase the other emission in excess of the emission of that pollutant by the vehicle in the absence of such a device. If two or more exhaust devices are certified that they meet the requirements of this section, the state board may not require the installation of more than one exhaust device on any motor vehicle.

43603. The state board shall adopt, by regulation, criteria for the certification of exhaust devices pursuant to Section 43601. Such criteria shall include, but not be limited to, requirements that:

- (a) The device meets the cost and performance requirement specified in Section 43604.
- (b) The device shall not allow exhaust emissions exceeding the amount specified in Section 43602.
- (c) The manufacturer of the device comply with Section 43635.

43604. An exhaust device certified pursuant to Section 43601:

- (a) Shall not cost, including the cost of installation, more than eighty-five dollars (\$85).
- (b) Shall not require maintenance more than once each 12,000 miles of operation, and such maintenance shall not cost, including the cost of parts and labor, more than fifteen dollars (\$15).
- (c) Shall equal or exceed the performance criteria established by the state board for such devices for new motor vehicles or, in the alternative, have an expected useful life of at least 30,000 miles of operation.

43610. The state board shall set standards for, and certify, exhaust devices to significantly reduce the emission of oxides of nitrogen from 1966 through 1970 model year motor vehicles, as determined by the state board from a representative sampling of such motor vehicles, which the state board has found to be necessary and technologically feasible to carry out the purposes of this division. In setting standards under this section, the primary consideration shall be the greatest possible reduction of oxides of nitrogen.

43611. The state board shall adopt, by regulation, criteria for the certification of exhaust devices pursuant to Section 43610. Such criteria shall include, but not be limited to, requirements that:

- (a) The device meets the cost and performance requirements specified in Section 43612.
- (b) The device shall not allow exhaust emissions of oxides of nitrogen exceeding the standard adopted by the state board pursuant to Section 43610.
- (c) The manufacturer of the device comply with Sections 43613 and 43635.

43612. An exhaust device certified pursuant to Section 43610:

- (a) Shall not cost, including the cost of installation, more than thirty-five dollars (\$35).
- (b) Shall not require maintenance more than once each 12,000 miles of operation, and such maintenance shall not cost, including the cost of parts and labor, more than fifteen dollars (\$15).
- (c) Shall equal or exceed the performance criteria established by the state board for devices for new motor vehicles or, in the alternative, have an expected useful life of at least 50,000 miles of operation.

43613. The manufacturer of an exhaust device certified pursuant to Section 43610 shall include, with the sale of such device, instructions setting forth what steps the purchaser should take to maintain such device in proper working condition.

43614. After one or more devices are initially certified pursuant to Section 43610, no device shall be certified under that section which is less effective than the one or ones initially certified. Any subsequent certification of a more effective device shall not affect the certification of a previously certified device.

43630. (a) In addition to certifying devices which meet the standards set forth in, or established pursuant to,

Sections 43602 and 43610, the state board shall adopt standards for certifying exhaust devices which achieve a reduction of the emission of hydrocarbons, carbon monoxide, and oxides of nitrogen from the exhaust of a motor vehicle substantially below the standards for any two pollutants set forth in, or established pursuant to, Section 43602 or 43610. If, however, an exhaust device is shown to substantially reduce the emission of any two of the three pollutants, the state board may certify such a device, so long as the installation of such device in a motor vehicle does not increase the emission of the other pollutant in excess of the emission of that pollutant by the vehicle in the absence of such a device.

- (b) Devices certified pursuant to this section may be certified without regard to the provisions of subdivision (a) of Section 43604 or subdivision (a) of Section 43612.
- (c) After one or more such devices are initially certified, no device shall be certified pursuant to this section which is substantially less effective than any device previously certified, unless the state board determines, pursuant to a cost-benefit analysis, that such less effective device is also substantially less costly and therefore merits certification. Any subsequent certification of a more effective device shall not affect the certification of a previously certified device.
- (d) The state board may permit the installation of a device certified pursuant to this section in lieu of any certified motor vehicle pollution control device which is required to be installed pursuant to any other provision of state law, if the installation of such device on that particular classification of motor vehicles results in no greater emissions than if the required certified device were operative over the life of the vehicle. The applicant shall be responsible for proving compliance with this subdivision and with other applicable criteria. Certificates of compliance shall be required upon the installation of a device certified pursuant to this section and installed pursuant to this subdivision, as if it were a device required by any other provision of state law.

43635. As a condition to the certification of any motor vehicle pollution control device required under this chapter, except Section 43630, the manufacturer of such a device, in order to protect the public interest, shall agree to either of the following:

- (a) That, until two or more such devices are certified for the same sub classification of motor vehicles, he enter into such cross-licensing or other agreements the state board determines, after a public hearing, are necessary to insure adequate competition among manufacturers of such devices.
- (b) That, if his device is the only one made available to the public, the retail price of the device, including installation, does not exceed the price established, after a public hearing, by the state board for that device.

43636. (a) In establishing the fair and reasonable retail price for a motor vehicle pollution control device for purposes of subdivision (b) of Section 43635, the state board shall take into consideration the cost of manufacturing the device and the manufacturer's suggested retail price.

- (b) The price established by the state board shall, in no case, exceed the amount specified in subdivision (a) of Section 43604 or subdivision (a) of Section 43612, as the case may be.

43640. The state board may revoke, suspend, or restrict a certification of a previously certified device, or an exemption previously granted, upon a determination by the state board that the device no longer operates within the applicable criteria and standards adopted by the state board or no longer should be exempted. Such a determination may be based on any relevant information, including, but not limited to, a change in the device, significant differences between certified and production models, or new data which bear upon the applicable certification criteria or standards and require the revocation of the device.

43641. Proceedings to review the denial of an application for certification or exemption, or proceedings to revoke, suspend, or restrict a certification previously granted by the state board, shall, upon the timely request of the applicant or affected manufacturer, be conducted by the state board in accordance with the provisions of Chapter 5 (commencing with Section 11500), Part 1, Division 3, Title 2 of the Government Code, and the state board shall have all the powers granted therein to the Office of Administrative Hearings.

43642. Certification for a motor vehicle pollution control device may be revoked by the state board, if the actual cost of the device installed exceeds the cost permitted by law or established pursuant to subdivision (b) of

Section 43635.

43643. Any motor vehicle equipped with a certified device shall not be deemed in violation of the provisions of this part, or Section 27156 of the Vehicle Code, because the certification of the device is subsequently revoked, suspended, or restricted. Replacement parts for the device may continue to be supplied and used for such vehicle, unless the revocation, suspension, or restriction is based upon a finding that the certified device has been found to be unsafe in actual use or is otherwise mechanically defective, in which event the device shall be brought into compliance with the provisions of this part within 30 days after such a finding.

43644. (a) No person shall install, sell, offer for sale, or advertise, or, except in an application to the state board for certification of a device, represent, any device as a motor vehicle pollution control device for use on any used motor vehicle unless that device has been certified by the state board. No person shall sell, offer for sale, advertise, or represent any motor vehicle pollution control device as a certified device which, in fact, is not a certified device. Any violation of this subdivision is a misdemeanor.

(b) Subdivision (a) shall not preclude any person from installing, selling, offering for sale, or advertising a device as a motor vehicle pollution control device for use on a particular classification of used motor vehicles if the state board has found that the installation of the device on that particular classification of used motor vehicle results in such vehicles meeting the state exhaust emissions standards.

43645. Whenever the state board certifies a motor vehicle pollution control device for the control of emissions of pollutants from a particular source of emissions from motor vehicles for which standards have been set by this part or by the state board, it shall so notify the Department of Motor Vehicles, the Department of the California Highway Patrol, and the bureau.

43646. (a) The bureau, in consultation with the state board, may develop, not later than 180 days from the operative date of this section, a list of engine maintenance practices that are designed to improve a motor vehicle's engine operating efficiency. The bureau shall conduct any evaluations that it determines to be necessary to identify the extent to which various maintenance practices could reduce vehicle emissions, and the minimum periodic application of each maintenance practice that is required to achieve the desired improvement in engine operating efficiency. The bureau may contract with private automotive testing services to carry out the evaluations.

(b) The bureau shall make the list available to the public, and shall specify therein the extent to which each maintenance practice can be expected to reduce vehicle emissions, and how the application of each practice could result in a reduction of the vehicle's smog index.

(c) A motor vehicle owner who subjects his or her vehicle to enhanced maintenance practices, as established by the bureau, may submit the vehicle to an in-use emissions evaluation at a smog check station to determine if excessive in-use emissions have been reduced. If the vehicle is certified as having reduced its emissions relative to its last in-use emissions evaluation, the Department of Motor Vehicles shall adjust the smog index for the vehicle. Vehicles receiving adjustments pursuant to this subdivision shall submit to annual in-use emissions evaluations to maintain their adjusted smog index. A failure to submit an annual in-use emissions evaluation to the Department of Motor Vehicles shall result in the vehicle's smog index being adjusted to its original level.

(d) This section shall become inoperative pursuant to Section 33 of the act adding this section or, in any case, five years from the date determined pursuant to Section 32 of the act adding this section, and on the January 1 following the date upon which this section becomes inoperative, is repealed.

43650. Every 1955 and later model motor vehicle shall be equipped with the certified device as required by the Department of Motor Vehicles Manual of Registration Procedures as of January 1, 1975, or as amended to reflect the adoption of rules and regulations by a district board pursuant to Section 43658.

43651. Every 1963 or later model year motor vehicle, subject to registration in this state, shall be equipped with a certified device to control its crankcase emissions.

43652. Except as provided in Section 43657, every 1955 through 1965 model year motor vehicle, subject to registration in this state, upon either transfer of ownership and registration, or upon initial registration of such



vehicle not previously registered in this state, shall be equipped with a certified device to control its exhaust emissions in accordance with a schedule of installation adopted by the state board.

43653. Every 1966 or later model year motor vehicle, subject to registration and first sold and registered in this state, shall be equipped with a certified device to control its crankcase emissions and exhaust emissions.

43654. (a) Except as otherwise provided in subdivision (b), every 1966 through 1970 light-duty motor vehicle, subject to registration in this state, shall be equipped with a certified device to control its exhaust emission of oxides of nitrogen upon initial registration, upon transfer of ownership and registration, and upon registration of a motor vehicle previously registered outside this state.

(b) Subdivision (a) shall not apply to a 1966 through 1970 light-duty motor vehicle (1) which is registered to, or subject to registration by, an elderly low-income person, (2) which was purchased from a person other than a dealer or a person holding a retail seller's permit, and (3) which is used principally by or for the benefit of the elderly low-income person. However, only one vehicle described above shall be registered to, or subject to registration by, the elderly low-income person at any one time.

(c) For purposes of subdivision (b), the Department of Motor Vehicles may require satisfactory proof (1) of the age of the transferee of the motor vehicle, (2) of the combined adjusted gross income of the household in which the transferee resides, and (3) that the transferor of the motor vehicle is a person other than a dealer or a person holding a retail seller's permit.

43655. (a) The state board shall adopt, by regulation, schedules of installation of certified devices to control exhaust emissions for purposes of Section 43652, after consultation with the Department of the California Highway Patrol, the Department of Motor Vehicles, and the bureau.

(b) In establishing the schedules, the state board shall consider all relevant factors, including, but not limited to, the burden of enforcement on the Department of the California Highway Patrol, the Department of Motor Vehicles, and the bureau, the need for rapid installation of motor vehicle pollution control devices in order to preserve and protect the public health, and the existing ambient air quality in the air basins.

43656. The state board may exempt from any schedule of installation adopted pursuant to Section 43654 or 43655:

(a) Motor vehicles or classifications or sub classifications of motor vehicles for which certified devices are not available.

(b) Motor vehicles or classifications or sub classifications of motor vehicles whose emissions are found by appropriate tests to meet applicable emission standards without an additional motor vehicle pollution control device.

(c) Implements of husbandry.

(d) Vehicles which qualify for special identification plates pursuant to Section 5004 of the Vehicle Code.

43656.5. The charge that can be made for the inspection and certification of exemption granted by the state board pursuant to Section 43656 shall not exceed three-tenths (0.3) of one hour multiplied by the hourly labor rate charged by the particular garage or service station. The charge shall be posted as a fixed fee.

43657. The state board may also exempt, from the schedule of installation adopted pursuant to Section 43655, any motor vehicle registered to an owner whose residence is in a county, or portion thereof, which the state board finds, after a public hearing, that the installation of a certified device pursuant to Section 43652 to control exhaust emissions is not necessary or desirable to preserve and protect the public health and the existing ambient air quality thereof.

43658. (a) If the evidence submitted at a public hearing indicates that, in order to preserve the ambient air quality of a district, it is necessary that every 1955 through 1965 model year motor vehicle within the district be equipped with device or devices certified by the state board to control emission of pollutants from the crankcase or exhaust, the district board may adopt rules and regulations to require the installation of such devices.

(b) The rules and regulations shall provide for a schedule of installation by which the motor vehicles are to be

equipped with certified device, taking into consideration the number of motor vehicles to be equipped, the availability of such devices, and the availability of licensed installers to install such devices.

- (c) The district board shall coordinate its activities pursuant to this section with the Department of the California Highway Patrol and the Department of Motor Vehicles in order to insure adoption of procedures which will facilitate enforcement of the rules and regulations adopted pursuant to this section.

43659. (a) The state board shall annually review the requirement that an exhaust device be installed on every 1955 through 1965 model year light-duty motor vehicle upon initial registration, upon transfer of ownership and registration, or upon registration of a motor vehicle previously registered outside this state, to determine the contribution of that requirement to the maintenance of required ambient air quality standards in those air basins where the requirement is applicable.

- (b) In making its determination, the state board shall consider all relevant factors, including, but not limited to, the fact that the requirement is being imposed on a constantly decreasing number of motor vehicles.

- (c) Upon a determination by the state board by regulation that the requirement is no longer a significant factor to the maintenance of required ambient air quality standards in any applicable air basin, except as provided in subdivision (d), 1955 through 1965 model year light-duty motor vehicles in that air basin shall no longer be required to be so equipped.

- (d) All 1955 through 1965 model year light-duty motor vehicles equipped with an exhaust device pursuant to the requirement prior to the adoption of the regulation by the state board pursuant to subdivision (c) shall continue to be so equipped.

43660. The state board shall review the requirement that every 1966 through 1970 light-duty motor vehicle be equipped with a certified device to control its exhaust emissions of oxides of nitrogen upon initial registration and upon transfer of ownership and registration, to determine the contribution of that requirement to the maintenance of ambient air quality standards in the state and the cost effectiveness of that requirement. The state board shall report to the Legislature its findings and recommendations with regard to the requirement not later than January 1, 1984.